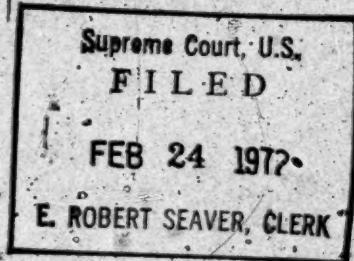


APPENDIX

**Supreme Court of the United States**

OCTOBER TERM, 1971

No. 71-506



UNITED STATES OF AMERICA and  
FEDERAL COMMUNICATIONS COMMISSION,  
*Petitioners,*

—v.—

MIDWEST VIDEO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED OCTOBER 8, 1971.  
CERTIORARI GRANTED JANUARY 10, 1972.

# Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-506

UNITED STATES OF AMERICA and  
FEDERAL COMMUNICATIONS COMMISSION,  
*Petitioners,*

—v.—

MIDWEST VIDEO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## RELEVANT DOCKET ENTRIES IN THE COURT OF APPEALS

Date

1970

- July 28 Docketing case. Petition for review of Order of Federal Communications Commission, and attachments
- Aug. 19 Stipulation of parties that neither record nor certified list will be filed.
- Oct. 30 Appendix  
Brief of petitioner
- Dec. 17 Brief of Respondent, U.S.A.
- Dec. 28 Brief of Respondent F.C.C.

1971

- Jan. 22 Argued and submitted . . .
- Feb. 4 Motion of petitioner for stay of certain Rules of FPC (*sic*), etc.
- Feb. 10 Motion of American Civil Liberties Union to file brief as *amicus curiae*.
- Feb. 22 Order: Midwest Video Corp. granted stay and Comm. enjoined from enforcing § 74.111(a) against petitioner pending final decision, etc. Issuance of injunction conditioned on filing of bond (\$5000) with Clerk of this Court, etc. Court reserves jurisdiction to terminate injunction.
- Mar. 2 Order: Mtn of American Civil Liberties Union for lve to file brief *amicus curiae* denied for reason application untimely made and good cause not shown.
- May 13 Opinion by J. Van O, concurring opinion by J. Gibson.



1971

May 13 Judgment: Order of FCC requiring CATV operators to originate programs as condition for continued CATV operations set aside.

June 8 Cert. copy of Judgment.

Aug. 6 Notice of extension of time to Oct. 9, 1971 to file petition for certiorari

Oct. 18 Notice of filing pet. for Cert. in Sup. Court, U.S.

1972

Jan. 28 Order of Sup. Ct. granting Cert.

Jan. 28 Cert. trans. prepared for Sup. Ct.

FCC 68-1176

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of  
AMENDMENT OF PART 74, SUBPART K, OF THE  
COMMISSION'S RULES AND REGULATIONS REL-  
ATIVE TO COMMUNITY ANTENNA TELEVISION  
SYSTEMS; AND INQUIRY INTO THE DEVELOP-  
MENT OF COMMUNICATIONS TECHNOLOGY AND  
SERVICES TO FORMULATE REGULATORY POL-  
ICY AND RULEMAKING AND/OR LEGISLATIVE  
PROPOSALS

Docket No. 18397

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY  
(Adopted December 12, 1968)

BY THE COMMISSION: COMMISSIONER BARTLEY DISSENTING AND ISSUING  
A STATEMENT; COMMISSIONERS COX AND ROBERT E. LEE CONCURRING  
IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT; COM-  
MISSIONER JOHNSON CONCURRING IN THE RESULT.

1. Notice is hereby given of proposed rulemaking and inquiry in the  
above-entitled matter.

*1. Nature and Scope of This Proceeding*

2. The purpose of this proceeding is to explore the broad question  
of how best to obtain, consistent with the public interest standard of  
the Communications Act, the full benefits of developing communica-  
tions technology for the public, with particular immediate reference  
to CATV technology and potential services, and the nature of any  
regulations and/or proposed legislation that may be necessary or de-  
sirable to further this goal. Many of the matters discussed below (see  
pts. II and V) have wide ramifications and pertain to other industries  
in addition to CATV. While this exploration is sparked by CATV  
development, our consideration of these matters necessarily entails a  
much broader perspective. We believe that a far-ranging, overall view  
is necessary if the Commission is to come to grips with this dynamic  
field and succeed in its efforts to assure the public of the most efficient  
and effective nationwide communications service possible.

3. The Commission is hopeful that this proceeding will provide  
meaningful and practical assistance to its consideration of regulatory  
problems which may require resolution within the next decade or so.  
We plan to utilize the proceeding to obtain informed opinion, technical  
information, and present viewpoints of interested persons, for the  
inauguration of discussion of new questions as they arise, as a vehicle

for rulemaking action at appropriate stages, and as a basis for formulation of legislative proposals. Therefore, further notice, expanding or altering the scope of this *Rulemaking and Inquiry*, may subsequently be issued as necessary or appropriate. Any of the matters encompassed in this proceeding may be the subject of rulemaking actions within the Commission's present statutory authority or within any authority subsequently conferred by the Congress. Moreover, certain of the topics we intend to explore, particularly those requiring consideration of extensive economic or technical analysis, may be contracted out for special studies.<sup>1</sup> At the same time, some of the areas delineated below are of particular and immediate concern, and may require prompt regulatory action within the Commission's present authority. Accordingly, it is contemplated that rules may be adopted in some areas specified below, without issuance of a further notice.

## II. Background

4. The Commission has long recognized that CATV is rapidly evolving from its original role as a small, five-channel, reception service bringing television broadcast signals to areas which lack broadcast service or do not receive the full services of the three national networks. In the *First and Second CATV Reports*,<sup>2</sup> we discussed at some length the trend of CATV, at that time, toward 12 channel systems and proposed entry into large metropolitan centers. It now appears that cable technology may be on the verge of expanding system capacity to 20 or more channels, and that a variety of new services to the public are envisioned.

5. Thus, we note that the CATV industry generally is placing increased emphasis on program origination, both of a local public service nature and of the entertainment type,<sup>3</sup> and on the provision of other services to the public. The Commission recently authorized a test of unrestricted program origination without commercials by CATV systems in the San Diego area, and conditioned the carriage of broadcast signals by one system upon a requirement that it operate to a significant extent as an outlet for noncommercial community self-expression. *Midwest Television, Inc.*, 13 FCC 478, 503-508, 510. In so doing, the Commission stated (13 FCC 2d at 505-506):

CATV program origination offers promise as a means for increasing the number of local outlets for community self-expression and for augmenting the public's choice of programs and types of service, without use of spectrum. Whereas television broadcast stations are usually located in or near a central community and are intended to serve a much broader area encompassing other communities, almost every community of any appreciable size could have its own CATV system and therefore its own local outlet. The CATV system is not handicapped by limited channel capacity, having 12 channels in comparison to the one channel of the individual broadcaster, and

<sup>1</sup> Moreover, it may be necessary for the Commission to expand its own research effort, in order not only to keep abreast of technology, but also to conduct studies (technical, economic, and social) of a type which would not normally be conducted by private industry or other government agencies. Such studies would be in keeping with the responsibilities assigned to the Commission by the Communications Act, and are essential if the Commission is to be responsive to public needs and requirements in the field of communication.

<sup>2</sup> *First Report and Order in Dockets Nos. 14895 and 18435*, 38 FCC 683 (1965); *Second Report and Order in Dockets Nos. 14895, 15233, and 15914*, 2 FCC 2d 725 (1966).

<sup>3</sup> See, e.g., *Television Digest*, Mar. 11, 1968, p. 5; *New York Times*, Oct. 18, 1968, p. 87N.

thus has the technical flexibility to provide different types of programs or services on some channels without affecting the service simultaneously provided on other channels. Moreover, since the CATV operation is based on subscriber fees for the total package, the CATV operator is largely free of the broadcaster's economic requirement that the programming on each channel be such as to attract sufficient audience and advertising revenue to make operations on that channel viable per se. The CATV operator has more flexibility to present programming of minority interest on some channels. And, finally, CATV program origination does not entail the question of "unfair competition" posed by CATV importation of broadcast signals from another market (*Second Report*, 2 FCC 2d at 778-781), or any disparate situation with respect to copyright liability, and would be less likely to duplicate the programs of local broadcast stations. [Footnote omitted.]

The Commission also has pending before it a rulemaking proceeding to determine whether frequencies in the community antenna relay service should be used for the transmission of CATV originated program material (*Notice of Proposed Rulemaking* in docket No. 17999, 33 F.R. 3188).<sup>4</sup> The matter of cable subscription television is included among the issues in docket No. 11279 (*Further Notice of Proposed Rulemaking and Notice of Inquiry* in docket No. 11279, 31 F.R. 5136).

6. There are other indications of impending CATV operations on a broader scale and in new areas of potential use. In New York City the Mayor's Advisory Task Force on CATV and Telecommunications has recommended, in a report dated September 14, 1968, that cable television service be made available to every home in that city within the next 2 or 3 years. It is contemplated that these CATV systems would initially have a minimum of 18 channels, of which 11 would be used to carry local television broadcast signals; three would be reserved for the exclusive use of the city (without charge to the latter), and four would be used for program origination. Each authorized cable television company would be permitted to use two of the program origination channels, one for the presentation of public service programs and the other for whatever programming it wished to offer, and would operate the other two channels as a common carrier making them available by lease to outside users who wish to present original programs.

7. The report to the mayor of New York City also contemplates that new uses for cable television channels will develop as channel capacity is enlarged over the coming years. In a letter accompanying the report, the task force chairman states:

In conclusion, the promise of cable television remains a glittering one. While progress toward realizing this promise has been slow, there is now an abundance of venture capital ready and able to extend cable television throughout the city. For venture capital sees the possibility of rich rewards. Those who own these electronic circuits will one day be the ones who will bring to the public much of its entertainment, news, and information, and will supply the communications links for much of the city's banking, merchandising, and other commercial activities. With a proper master plan these conduits can at the same time be made to serve the city's social, cultural, and educational needs. A master plan can be effective now. It will not be a decade hence if stop-gap expedients prevail.

8. It has been suggested that the expanding multichannel capacity of cable systems could be utilized to provide a variety of new com-

<sup>4</sup> The Commission's rules governing the common carrier services do not prohibit such service to CATV systems.



munications services to homes and businesses within a community, in addition to services now commonly offered such as time, weather, news; stock exchange ticker, etc. While we shall not attempt an all-inclusive listing, some of the predicted services include: facsimile reproduction of newspapers, magazines, documents, etc.; electronic mail delivery; merchandising; business concern links to branch offices, primary customers or suppliers; access to computers; e.g., man to computer communications in the nature of inquiry and response (credit checks, airlines reservations, branch banking, etc.), information retrieval (library and other reference material, etc.), and computer to computer communications; the furtherance of various governmental programs on a Federal, State, and municipal level; e.g., employment services and manpower utilization, special communications systems to reach particular neighborhoods or ethnic groups within a community, and for municipal surveillance of public areas for protection against crime, fire detection, control of air pollution, and traffic; various educational and training programs; e.g., job and literacy training, preschool programs in the nature of "Project Headstart," and to enable professional groups such as doctors to keep abreast of developments in their fields; and the provision of a low cost outlet for political candidates, advertisers, amateur expression (e.g., community or university drama groups) and for other moderately funded organizations or persons desiring access to the community or a particular segment of the community.

9. It has been suggested further that there might be interconnection of local cable systems and the terminal facilities of high capacity terrestrial and/or satellite intercity systems, to provide numerous communications services to the home, business, and educational or other center on a regional or national basis. The advent of CATV program origination in such cities as New York and Los Angeles (where there is also CATV activity) gives rise to the possibility of a CATV origination network or networks. The so-called "wired city" concept embraces the possibility that television broadcasting might eventually be converted, in whole or in part, to cable transmission (coupled with the use of microwave or other intercity relay facilities), thereby freeing some broadcast spectrum for other uses and making it technically feasible to have a greater number of national and regional television networks and local outlets. More broadly in the area of general communications, the present and future development of intercity facilities with very high communications capacity—e.g., the L5 coaxial cable, millimeter wave guides, communications by laser beams—coupled with the potential of the computer and communications satellite technologies,<sup>5</sup> may stimulate the provision of new nationwide or regional services of various kinds, which would require connection to high capacity communications facilities within the locality and from the street to the premises of the consumer. Another matter to be explored

<sup>5</sup> E.g., an increasing link between bulk data transmission and computers, and the special attributes of the satellite technology in the provision of service from one transmission point to many reception points, and in greater system flexibility as compared to fixed terrestrial facilities. As the satellite technology becomes more sophisticated, it might be utilized for multiple access data services and computer links, specialized switched networks, and random networks utilizing some mobile ground equipment for occasional service requirements.



in this area is the expanding multichannel capacity of CATV (together with its proposed auxiliary use of high capacity, local microwave links),<sup>6</sup> including the question of whether it is technically and economically feasible for CATV to develop capability for two-way and switched services.

10. We shall first set forth the Commission's rulemaking proposals in the area of CATV program origination and related matters.

### *III. Proposed Rules Concerning CATV Program Origination and Related Matters; Technical Standards; and Reporting Requirements*

#### *Program origination*

11. The increasing focus of the CATV industry on program origination raises questions which are imminent and require prompt rulemaking decisions by the Commission. We believe that the proposed rules discussed below are within the Commission's present statutory authority. However, here again, as we have previously stressed,<sup>7</sup> the Commission is clearly concerned with new and important questions of policy and law in the communications field, and would welcome congressional guidance as to policy and legislation conferring direct general authority over CATV.

12. Preliminarily, we point out that we discuss below the possibility of the CATV operator leasing some channels on the system to others for the purpose of program origination or other communications services (see par. 26). The Commission is concerned about a common carrier acting as a program originator, and intends to return to this issue as the industry develops. Meanwhile, we believe that experimentation is most likely to come from CATV operators and that they should be encouraged both to originate themselves and to operate as common carriers on available channels to test the possible market.

13. It is the Commission's tentative conclusion that, for now and in general, CATV program origination is in the public interest. The Commission has also noted that there may be a need for some regulation thereof, in order to insure operation fully consistent with the public interest in the larger and more effective use of radio. (Sec. 303(g) of the Communications Act, as amended.) In *Midwest Television, Inc., et al.*, 13 FCC 2d 478, 505-506, the Commission recognized the promise of CATV program origination as a means for increasing the number of local outlets for community self-expression and for augmenting the public's choice of programs and types of service, without use of broadcast spectrum (see quote in par. 5 above). We pointed out that almost every community of any appreciable size could have its own local CATV outlet, and that the CATV operator has greater technical and economic flexibility than the broadcaster to present programming of minority interest on some channels. We further noted that "CATV program origination does not entail the question of 'unfair competition' posed by CATV importation of broadcast signals

<sup>6</sup> E.g., *Teleprompter Corp.*, 12 FCC 2d 936, 940-945 (files Nos. 3766-ER-ML-66; 4609-ER-CP-68; 4610-ER-CP-68); *Chromalloy American Corp.*, experimental licenses for stations KB2XGW and KB2XFL (files Nos. 4536-ER-PL-68 and 4482-ER-PL-68).

<sup>7</sup> See, e.g., *Notice of Inquiry and Notice of Proposed Rulemaking in Docket No. 15971*, 1 FCC 2d 453, 465-466.

from another market (*Second Report*, 2 FCC 2d at 778-781), or any disparate situation with respect to copyright liability, and would be less likely to duplicate the programs of local broadcast stations." (*Ibid.*)

14. There are, of course, other important considerations, as we recognized in *San Diego* (13 FCC 2d at 505): "such as whether television broadcast service would be adversely affected through a siphoning-off of popular program material now or potentially available on the free service or a loss of audience and advertising revenue; whether measures are needed to avoid an undue concentration of control of the media of mass communication; and whether CATV systems should be subject to requirements in the nature of section 315 of the Communications Act (equal time for political candidates), section 317 (sponsorship identification), and the 'fairness doctrine' (fair presentation of both sides of controversial issues of public importance), etc." However, the Commission's authority to regulate the use of broadcast signals as a base for CATV program origination encompasses power to adopt regulations reasonably designed to prevent such operations from having detrimental consequences to the public interest and to promote their development along lines likely to maximize the potential benefits to the public. On balance, we think that CATV origination offers sufficient promise to be encouraged. The proposed rules discussed below are the minimum measures we believe to be presently essential or desirable in the public interest.

#### *Required origination*

15. The Commission is proposing, first, to condition the carriage of television broadcast signals (local or distant) upon a requirement that the CATV system also operate to a significant extent as a local outlet by originating. In allocating frequencies and granting broadcast licenses, the Commission has long sought to effectuate the goal of section 307(b) of the Communications Act by having as large a number of local outlets in as many communities as possible. We have noted above the potential contribution of CATV in this respect, both as a means of providing a local outlet to communities which have no television broadcast outlet of their own and as a means of enhancing diversity in communities which do have broadcast outlets. We have also previously determined that the Commission's concern with CATV carriage of broadcast signals is not just a matter of avoidance of adverse effects, but extends also to requiring CATV affirmatively to further statutory policies. *Shen-Heights TV Association*, 11 FCC 2d 814; *Midwest Television, Inc.*, 13 FCC 2d at 502-503, 510.

16. We think it generally appropriate to condition CATV's use of broadcast signals upon a requirement that it further the allocations policy of achieving a multiplicity of local outlets. There may, however, be practical limitations stemming from the size of some CATV systems. Accordingly, consideration will be given to exempting the smallest systems. Comments are requested as to a reasonable cutoff point in light of the cost of the equipment and personnel minimally necessary for local originations. (See also par. 26, below.)

*Economic basis for origination—Advertising*

17. We turn now to the complex issue of regulation of advertising material in connection with CATV origination. The Commission has reached no definitive conclusion as to the number of possible alternatives here. One, of course, is no regulation at all of this aspect. Another proposal would be to adopt rules along the lines of the provision in the San Diego order, which would generally prohibit CATV systems from carrying the signal of any television broadcast station if the system originates advertising material (except as indicated in par. 26, below). In placing this condition on the San Diego test of CATV program origination, the Commission set out specific grounds (*Midwest Television, Inc.*, 13 FCC 2d at 508), which are pertinent to this general proceeding and need not be repeated here. We seek to explore in this proceeding all aspects of the above-cited factors, including the effect of originations with advertising upon the viability of stations in both the top-100 television markets and in the smaller television markets, as against the effect of any prohibition of advertising upon originations by CATV systems. In that respect, we wish to explore fully the issue of financing of original programming on CATV systems and particularly whether subscriber fees could afford an ample financial base for such operations.\* There is also the possibility, as an alternative or as a supplement, of CATV originations on a per program charge of higher monthly fee basis. There is the further approach of permitting limited commercials, such as only at natural breaks, with no interruption of program material. Persons commenting on this aspect and paragraph 18 below should address themselves to the following situations: (1) communities with no broadcast service; (2) communities served by a radio station(s), but not a television station; (3) smaller television markets; and (4) major television markets. We also seek information as to existing advertising by a CATV system, the experience of broadcasters with respect to such advertising, the rates charged, and the nature of the advertisers; e.g., are the advertisers new to television or have they previously utilized television and/or radio broadcast facilities?

18. Assuming that there were a prohibition on commercials, there is then the issue whether such a prohibition should apply to CATV systems in communities which receive no television broadcast service, or only one such service, and which may therefore have a shortage of advertising outlets. Comments are invited as to any special considerations pertaining to such areas, including the effect of a possible exception on local radio stations. We are also concerned about the situation

\*For example, we request comments upon the following: If \$1 per month of the \$3 monthly fee from 1 to 2 million subscribers in a city like New York was allocated to program origination, the programming fund would amount to \$12 to \$24 million annually. If CATV network operations were supported by a portion of the monthly subscriber fees paid to affiliated CATV systems throughout the country, the resulting financial base for network program origination and interconnection might well exceed the annual amount paid by a national television broadcast network for such purposes. The three television networks together annually spend about \$750 million on programming and \$45 million for interconnection, or an average of approximately \$267 million apiece for both. Assuming widespread CATV operations in major cities as well as smaller communities and a subscriber base of 45 million of the present 58 million television homes in the Nation, \$1 per month per subscriber would provide annual funds on the order of \$540 million. The foregoing is, of course, hypothetical. Comments requested on the economic feasibility of CATV systems allocating \$1 per month per subscriber to program origination.

of the small advertiser who may not be able to afford the rates of the television broadcast media. While the proposal discussed in paragraph 26 below may be a better way of dealing with this aspect, comments are requested on the desirability of permitting CATV systems to originate advertising by small advertisers on the program origination channel, again provided that there is no interruption of program continuity, i.e., that the advertising precedes or follows the program. Further, there is the issue of the applicability of the approaches delineated in this paragraph and paragraphs 17 and 20 as to originations on any common carrier channel of the CATV system (see par. 26), and what regulation of the lessee would be necessary or appropriate. Finally, we stress that while we have reached no conclusions in this important area and will do so only after careful consideration of the pleadings, all interested persons are expressly put on notice that no "grandfathering" is contemplated. In other words, the Commission is proposing to make any rules adopted applicable, upon their effective date, to all CATV service now in existence or commenced during the pendency of this proceeding, as well as to future CATV service.

*Equal time, sponsorship, identification, fairness*

19. The Commission further believes that a number of important national policies, now applicable to broadcasters, are equally relevant to CATV systems engaging in program origination. At a minimum, these comprise the policies embodied in section 315 of the Communications Act relative to "equal time" for political candidates and the "fairness doctrine," section 317 relative to sponsorship, identification, and the national policies relative to diversification of control of the media of mass communications. While the parties are free to suggest other relevant policies or areas for further rulemaking, we are at this time proposing rules only on these three aspects, as indicated below (pars. 20, 23-25).

20. As conditions to the carriage of broadcast signals by any CATV system which engages in program origination, the Commission proposes the following to be applicable to such originations:

(a) A rule condition analogous to section 315 of the Communications Act and section 73.657 of the Commission's rules concerning broadcasts by candidates for public office;

(b) A rule condition analogous to section 317 of the Communications Act and section 73.654 of the Commission's rules concerning announcement of sponsored programs;<sup>10</sup> and

(c) A rule condition analogous to the obligation, referred to in section 315(a) of the Communications Act and the rules promulgated thereunder, to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

It is contemplated that the obligations imposed by these conditions would be clarified through rulings upon complaints, as in the case of broadcasters, and that they would be enforced pursuant to the cease and desist procedure contained in section 312 of the Communications Act. Finally, we also request comments upon the possible application

\* Further, as in the case of previous proposals in the CATV field (see 1 FCC 2d 439, 472, par. 5b), we would expect that franchising authorities will give due regard to the fact that this matter is thus under Commission consideration.

<sup>10</sup> The nature of this condition will be affected by the resolution of the general issue of a proposed prohibition against origination of advertising material.



to CATV operations of obscenity and lottery provisions similar to those in the broadcast field (see U.S.C. 1304, 1964; sec. 73.656).

#### *Areas for local concern*

21. The foregoing represents the Commission's proposed area of concern with respect to this aspect of origination; e.g., provisions along the lines of sections 315, 317. In other respects, the Commission intends, at least initially, to rely largely on local authorities to see to it that CATV meets local communications requirements and interests to the satisfaction of the community.<sup>11</sup> While we are proposing to condition carriage of broadcast signals on a requirement that CATV operate to a significant extent as a local outlet by originating, this obligation might be met in a variety of ways and would be an appropriate area for additional requirements by the locality. Although we think commendable the suggestion that municipalities reserve some channel capacity for their own use without charge, a requirement of this nature is appropriately the function of local or State franchising authorities.

22. Cable television service has tended to develop on a noncompetitive, monopolistic basis in the areas served. The normal protection afforded consumers by providing a choice between alternative suppliers has not, in most instances, been available to the cable television subscriber. This consideration involves such matters as quality of service and repair, the reasonableness of the rates charged, technical standards, and so forth. Such protection has traditionally been provided the public by some form of government regulation of monopoly services. We do not now urge the application of our jurisdiction to the licensing of CATV systems by the FCC. We do, however, believe that local, State and Federal governmental agencies must face up to providing some means of consumer protection in this area. While we recognize that other problems are involved (such as rates to the public and regulation of any common carrier activities of CATV operators, see par. 26 below), it follows that local entities, either at the State or municipal level depending on State law, should—among other things—be concerned with various licensing considerations pertinent to the public interest, judgment to be made by the local authority—e.g., the legal, technical, financial, and character qualifications of the franchise applicant; the area to be served; the showing as to plans or arrangements for pole-line attachments with a public utility or arrangements with a common carrier or other appropriate feasibility plans; the provision of channels for public or municipal use. Such regulation, while called for in the case of present CATV operations, would be particularly appropriate in light of CATV operations with originations. Indeed, a question is presented whether these are matters as to which we should strongly urge local consideration or should make their consideration and disposition by local authorities, where appropriate under local law, a condition for the carriage of broadcast signals. Finally, in those relatively few instances where there need be no local franchise con-

<sup>11</sup> The reporting requirements discussed *infra*, the Commission's complaint procedures, and the statutory cease and desist procedure would, however, provide a check against flagrant abuse of the conditions on carriage of broadcast signals. The Commission would, of course, assume an active enforcement role with respect to the requirements relating to sections 315, 317, and diversification of control.



sideration, we request comments on whether Federal consideration is not then appropriate, and if so, our authority so to proceed (see secs. 2(a), 3(b) (d) and (e), and 301 of the Communications Act of 1934, as amended). We specifically invite comments on the matters discussed in this paragraph from interested State and local authorities, such as the mayors of CATV communities.

#### *Diversification*

23. In the area of diversification of control of the media of mass communications, the Commission is proposing three measures, particularly in view of the origination aspect discussed above. Here again, we stress that no grandfathering is contemplated, although consideration will be given to the question of affording an appropriate period within which compliance with the first two requirements is to be achieved. We are proposing, first, to prohibit cross-ownership of television broadcast stations and CATV systems within the station's grade B contour. While the grade B contour appears to be an appropriate standard in view of the Commission's policy of encouraging television broadcast licensees to establish translator facilities in pockets of poor reception within that contour, comments are invited on the desirability of prescribing some other area, such as the 35-mile zone (see pt. IV herein). Comments are also requested on the desirability of prohibiting cross-ownership of CATV systems and all broadcast facilities (including radio) assigned to the same community, and what consideration, if any, should be given to ownership of other local media, such as newspapers."

24. Second, the Commission is proposing rulemaking in the area of multiple ownership of CATV systems. It is contemplated that such rules would limit the total number of systems on a nationwide basis, based on the number of subscribers, the size of the communities, and the regional concentration. In other words, in addition to prescribing the maximum number of CATV systems which any one entity could own, or have an interest in, based upon the number of subscribers and the size of the communities, the proposed rules would limit the number of these that could be located within the same State or adjoining States (taking into account again the number that could be located in major metropolitan areas—e.g., there clearly should be a prohibition of common ownership of CATV systems in cities—i.e., the standard metropolitan statistical area—such as New York, Los Angeles, and Chicago). Comments are requested on the desirability of counting commonly owned systems within the same standard metropolitan statistical area as one system for some or all purposes. In addition to submitting suggestions as to appropriate limitations and the nature of the interest to be counted, interested persons are invited to address themselves to our view that smaller limitations should obviously apply if the CATV operator also has broadcast interests, particularly in television broadcasting.

25. The third measure stems from the Commission's concern, particularly in view of expanding cable-channel capacity, that any one

\* 23 Comments filed in docket No. 17371 (32 F.R. 6221) will be considered in this proceeding.

entity should have control over what programming is presented to the public on a large number of channels. We are therefore proposing to limit the number of channels on which CATV originated programming may be presented to one, not including any channels devoted to services of an automatic nature such as time and weather, news ticker, stock market ticker, etc.<sup>13</sup> As to the latter automatic services, we raise the issue whether they should not be subject to displacement, if demand develops among channel lessees (see par. 26 below). Moreover, to the extent that scarcity of CATV channels is presently a factor, a limitation on the number of channels devoted to CATV origination would facilitate operations of the nature next discussed.

#### *Common carrier operations*

26. We believe that the public interest would be served by encouraging CATV to operate as a common carrier on any remaining channels not utilized for carriage of broadcast signals and CATV origination. This would provide an outlet for others to present programs of their own choosing, free from any control of the CATV operator as to content except as required by the Commission's rules or applicable law. It might also provide a low cost outlet for political candidates, possibly advertisers, programs on a subscription basis, and various modestly funded organizations and entities in the community who may be unable to afford time on or obtain access to broadcast facilities. And it might further provide a means for municipal authorities to fulfill any of their communications needs that are not sufficiently met through CATV's obligation to act as a local outlet. We do not here propose to condition CATV's carriage of broadcast signals on a requirement that it operate as a common carrier on some channel or channels.<sup>14</sup> We simply point out that, subject to necessary State or local authorization and regulation, the CATV operator may do so, if it chooses. Indeed, this is another area where a local or State requirement might appropriately be imposed.

#### *Reporting requirement*

27. There are two further areas of proposed rulemaking that appear to warrant exploration at this time. One is the matter of requiring CATV operators to file information on a regular basis. In the *Second Report* the Commission called for a single submission and deferred the question of regular filings pending consideration of the responses to its questionnaire (FCC form 325). *Second Report*, 2 FCC 2d 725, 765; *Memorandum Opinion and Order* denying reconsideration, 6 FCC 2d 308, 322-323. The information then submitted is now, of course, out-of-date. In order to enable the Commission to keep abreast of CATV developments and fulfill its responsibilities in this field, as well as to assist the Congress in its consideration of any legislative proposal, we think it essential that there be periodic filings by CATV operators.

<sup>13</sup> The proposed rule again would be in terms of a condition upon carriage of broadcast signals.

<sup>14</sup> Since the areas of general inquiry set forth in pt. V above may be pertinent in this respect, we think that consideration of this question should be deferred to a later stage in this proceeding.

28. The Commission thus is proposing to require by rule that CATV operators file annual reports which will provide current information on such matters as the location of the system, number of subscribers, channel capacity, broadcast signals carried, extent, and nature of program origination, any other operations conducted on the system, financial data, ownership, and interests in other CATV systems, broadcast media and other business interests. As a starting point, comments are requested as to what additions, deletions, or other changes in FCC form 325 (app. A hereto) would be appropriate in light of the matters discussed in this Notice. Interested persons are also requested to address themselves to the possibility of an abbreviated form for smaller systems, the appropriate cutoff standard, and the minimum information that should be obtained from such systems. Comments are further requested on whether CATV systems should be required to keep records, available for inspection, to assist the Commission in enforcing the rules proposed in paragraph 20 above, and if so, the appropriate nature of such records.

#### *Technical standards*

29. The second area of proposed rulemaking is the question of technical standards for CATV systems. It has been repeatedly suggested that the Commission should undertake to prescribe uniform technical standards to further high quality service to the public, both broadcast signals and CATV originated material, and compatibility among systems for purposes of interconnection. In the *First Report*, we declined to do so for carriage of broadcast signals, noting that minimum standards might fall short of what could be voluntarily achieved by the CATV operator and that the development of appropriate technical criteria would take some time (38 FCC 683, 731). While the matter of technical standards was included in docket No. 15971 (1 FCC 2d 453, 476), the Commission is not yet in a position to propose specific criteria.

30. We think the time has come to make a start in this direction. Accordingly, interested persons are invited to make concrete and detailed suggestions as to what technical criteria might appropriately be prescribed. After consideration of the comments, the Commission may establish a committee to assist in the formulation of specific proposed criteria. Persons commenting on this aspect should indicate in their comments whether they would be interested in participating on such a committee. In any event, it is contemplated that a further notice will be issued proposing specific criteria prior to the adoption of any rules prescribing technical standards.

### *IV. Proposed Rules Relative to Importation of Television Signals*

#### *A. BACKGROUND CONSIDERATIONS*

31. The Commission has previously considered the question of integrating CATV in an appropriate and fair manner in the national television system in two recent reports—the *First Report and Order in Dockets Nos. 14895 and 15233*, 38 FCC 683 (1965), and the *Second Report and Order in Dockets Nos. 14895, 15233 and 15971*, 2 FCC 2d

725 (1966). We recognized the important contribution which CATV can make; for example, by bringing much needed television service to areas where reception of off-the-air signals is poor or nonexistent because of terrain or distance from a television market. (*First Report*, supra, at pp. 698-699.) We sought to promote this contribution by making microwave facilities available to the CATV systems. At the same time, in order to insure the establishment and healthy maintenance of the local television broadcast service—so vital to the public interest for the reasons set forth in paragraphs 44 and 45 (*First Report*, at p. 699)—we specified that the CATV system using microwave facilities must carry the local signal and must afford same-day nonduplication protection to the programming of the local stations. In this way, the local station would continue to have access to the television set of the CATV subscriber, and its audience for network programming would remain largely unfragmented—factors which we believed would contribute substantially to the station's continued healthy local service to all the people within its area. In the *Second Report* we extended these requirements to all CATV systems, whether or not they use microwave, and our authority to regulate the nonmicrowave system was sustained in *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968). Finally, in the *Second Report*, we considered the economic impact and unfair competition issues raised by the entry of CATV, operating with distant signals, on television broadcast service in the major markets, particularly on the establishment and healthy maintenance of the new UHF stations coming on the air as a result of the all-channel television receiver law. Because the nonduplication requirement is wholly ineffective in affording protection to the independent (nonnetwork) programming of such new stations, we devised the so-called major market, distant signal policy, discussed in the next paragraph. We further stressed that we would revise our rules as we gained added insight and experience. The purpose of this part of the *Notice* is to set forth proposed rule revisions, based upon that experience. We shall discuss, first, revision of the major market policy, and then our proposed policies in the smaller television markets.

#### B. IMPORTATION OF SIGNALS IN MAJOR MARKETS

32. The Commission is thus proposing rulemaking to revise the procedure adopted in the *Second Report and Order in Dockets Nos. 14895, 15233 and 15971*, 2 FCC 2d 725 (1966), relative to the carriage of television broadcast signals by CATV systems in major markets. Under section 74.1107, no CATV system may carry a distant signal—i.e., a signal carried beyond the grade B contour of the station—within the grade A contour of any station in the 100 largest television markets except upon a showing in an evidentiary hearing that such operation will be consistent with the public interest and, particularly, the establishment and healthy maintenance of television broadcast service in the area. We are here proposing, principally, to substitute a definitive policy for the evidentiary hearing procedure and for this purpose to replace the grade A contour with a mileage zone.



33. The major market hearing procedure was based on two main concerns: (1) That a CATV growth of substantial order in major markets might have a serious adverse impact on the development of UHF independent stations in these markets, thereby jeopardizing the achievement of an effective and equitable nationwide system of local television outlets—the goal of the all-channel receiver legislation; and (2) That, in view of the disparate position of broadcasters and CATV systems in acquiring programs in the TV program distribution market, these independent stations might face substantial competition of a patently unfair nature against which the same-day nonduplication requirement would be of virtually no assistance. (*Second Report*, 2 FCC 2d at 770-781.) Upon the basis of the record compiled in that proceeding, the Commission was unable to resolve the critical dispute as to whether CATV growth in major markets would in fact be substantial. (*Second Report*, 2 FCC 2d at 773.) It concluded that these questions should be explored and resolved in evidentiary hearing before CATV operations became entrenched, in view of the impracticability of effective action to roll back an established operation upon which the public has come to rely. (*Second Report*, 2 FCC 2d at 782.) The Commission further stated (2 FCC at 786): "As we gain more knowledge in this important area, particularly from the hearings being held, we shall revise or terminate the procedure, as experience dictates."

34. In the 2½ years since the *Second Report* was issued, the Commission has gained more experience with the matter of potential CATV penetration in major markets and the probable effect on potential UHF development. For example, the then existing uncertainty as to whether CATV growth in major markets would be minimal or substantial has been removed by the San Diego hearing and other proceedings involving areas which receive three full-network services. (*Midwest Television, Inc.*, 13 FCC 2d 478.) The San Diego proceeding established that potential CATV penetration is likely to be substantial, on the order of half the homes in that market (*Midwest*, 13 FCC 2d at 490-491). We were also convinced that a penetration of this order could pose a real threat to UHF development and that the unfair competition would be significant (13 FCC 2d at 492-502). San Diego, as the 50th market, is not a fringe sample but rather fairly typical of the top 100 markets as a whole. Finally, the Commission in *Midwest* pointed out that its longstanding allocations policies do not contemplate that a major television market should become, to a significant extent, merely a satellite of another major market for television purposes, since that would thwart the local service concept of the Communications Act (see secs. 307(b), 303(h); see legislative history of sec. 303(s); *Second Report*, 2 FCC 2d at 770-771). As stated in the *Midwest* case (13 FCC at 501), if such a result were deemed in the public interest, the Commission would follow the direct approach of granting increased height and power to stations in the largest communities and authorizing them to operate translator and satellite facilities in other sizable communities.

35. With this experience as background, we have re-examined one of the fundamental policy questions in this area—the element of un-



fair competition. This facet was discussed at length in the *Second Report*, 2 FCC 2d at 778-781. We pointed out that because CATV presently stands outside the competitive TV program distribution market (pars. 132-133, *Second Report*), an anomalous and completely unfair situation is presented. Namely, the UHF station has no protection against duplication by CATV systems bringing in distant signals of its film programming upon which it depends for an adequate economic base to serve as an outlet for local expression for all the people in its service area (par. 134).<sup>15</sup> And, even more important, both the CATV system and the broadcast station are large scale operations competing for audience—yet the one pays for its product and the other, without any payment, brings the same material into the community by simply importing the distant signals (par. 135, *Second Report*). Similar anomalies in the field of sports telecasts were pointed up (par. 136). We found that while “on its face, this competitive situation would appear to be a most unfair one,” no final determination could be made until further exploration in the hearing process, since “it may be that whatever the disparate conditions for operation, there is no need for concern because the CATV will not significantly affect the development or healthy maintenance of UHF broadcasting service.” (2 FCC 2d at pp. 780-781.)

36. The experience we have obtained in the hearing process now affords us the answer: CATV operating with distant signals can achieve significant penetration figures in the major markets—most probably in the order of 50 percent. (See *Midwest*, supra.)<sup>16</sup> With such penetration, the unfair competition of CATV, described above, will be a significant factor in the development or healthy maintenance of television broadcast service. We stress here that we are not focusing on the issue of whether CATV operations with distant signals will kill or severely cripple UHF operations—but rather believe that it is sufficient to find that the unfair competitive effect is a significant one, in view of the very significant penetration figure, and therefore should be eliminated under the public interest standard of the Communications Act.

37. The latter point also deserves stress. We are not proceeding on some notion of unfair competition from the viewpoint of the Federal Trade Commission Act or the *Compco* or *Sears* cases (*Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U.S. 234; *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225). Nor are we concerned here with unfair competition from the aspect of the copyright owner. Rather, our concern is the public interest in the broadcast field—“the larger and more effective use of radio” (sec. 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 303(g)). See also *Black Hills Video Corp. v. United States*, 399 F. 2d 65, 71 (C.A. 8). That being the case, we must proceed to consider regulations to eliminate this aspect of unfair competition. See *United States v. Southwestern Cable Co.*, 392 U.S. 157.

<sup>15</sup> The same-day nonduplication requirement is not effective to avoid the element of unfair competition. *Second Report*, 2 FCC 2d at 769-769; *Memorandum Opinion and Order* denying reconsideration, 6 FCC 2d 309, 313, 315, 317. We declined to “explore any fundamentally different approach while the copyright question is being actively considered by the Congress and the courts and before the outcome is known.” (6 FCC 2d at 317.)

<sup>16</sup> Indeed, even the CATV systems in *Midwest* estimated a 33-percent figure, again establishing CATV as a significant factor. Thus, no one seriously argues that CATV, operating with distant signals, will not achieve significant penetration in the major markets.

*Requirement for retransmission consent of the originating station*

38. We believe that the most appropriate and simplest way to eliminate this element of unfair competition is by adoption of a rule permitting the importation of distant signals, but requiring the CATV system which proposes to operate with distant signals in a major market to obtain retransmission consent of the originating stations. See the proposed rules relative to this part set forth in appendix C hereto. Such a rule would parallel section 323(a) of the Communications Act, which is applicable to broadcast stations (but not to CATV systems; see *First Report*, 38 FCC 683, 704) and which has been effective in dealing with the similar problems raised by analogous auxiliary services such as translators, boosters or satellites. We therefore seek to explore in this rulemaking whether the Commission, by rule, should follow the general congressional guidance in section 325(a) by adopting a retransmission requirement for CATV systems in the above-noted situations, and thus eliminate the unfair competitive aspect through direct application of market forces now operative as to analogous services. The alternative of adopting detailed nonduplication requirements effective as to non-network programs appears to us to be less desirable than the above simpler device of permitting market forces to eliminate the unfair competition.<sup>17</sup> It may be that a retransmission regulation will not be fully effective or may have drawbacks not now foreseen, requiring further revision or rulemaking. The purpose of this proceeding is to obtain all such relevant information, so that we may be in a position to make an informed judgment as to what regulation would best serve the public interest.<sup>18</sup>

39. While we believe that we must proceed to take appropriate steps to end the unfair competition aspect, both for reasons discussed above and within (par. 41), we are also cognizant of other important developments which we should take into account. We refer specifically to important congressional developments in the copyright field that bear directly on this issue of unfair competition. Congress is much interested in enactment of a new copyright act, the House having passed H.R. 2512 in the 90th Congress and the Senate being actively engaged in consideration of such a measure. Following the Supreme Court's decision in *Fortnightly Corporation v. United Artists Television, Inc.*, 392 U.S. 390, there are substantial indications that in the 91st Congress there will be enactment of a copyright law providing for a fair

<sup>17</sup> With the adoption of such a requirement, there might be some need, upon appropriate occasions, of Commission review (cf. *Memorandum Opinion and Order in Docket No. 9808*, 17 F.R. 10309, 10310; Commission letter to station KLTU, Tyler, Tex., and station KSLA, Shreveport, La., FCC 64-942, Oct. 14, 1964).

<sup>18</sup> Our proposal, with one exception noted below, is limited to the major markets. In the smaller markets, where there may well be a need for supplementary services, our general policies have sought to promote auxiliary services, including CATV operation. Thus, besides our microwave policies, we have supported the concept in the then pending copyright bill (H.R. 2512, 90th Cong.) that CATV systems operating in inadequately served areas should be able to bring in signals on a reasonable compulsory licensing basis. See letter to Chairman Staggers on H.R. 2512, dated Mar. 31, 1967. In line with that policy, we do not propose the retransmission requirement on an across-the-board fashion for the smaller television markets. Rather, we shall rely there upon the new proposals discussed within (pars. 56-58) and upon the nonduplication requirement, which is effective as to the substantial network programming of the stations in these markets, which are uniformly affiliated with networks. Where the system would propose to bring in signals in addition to those permitted under the proposal set forth in par. 57, the retransmission requirement would be applicable. In short, we seek to facilitate CATV operation in the smaller markets in a fair and appropriate manner.

many reception points will soon be realized domestically and that lower interconnection charges will encourage the development of a fourth network, regional networks and additional nonnetwork program sources for stations. In short, for so long as the achievement of an adequate commercial television system—"available, so far as possible, to all people of the United States" (sec. 1 of the Communications Act)—is dependent significantly upon the development of UHF, it would appear that as a minimum we should strive to preserve a fair opportunity for achieving additional local services on the UHF channels allocated to the top 100 markets. (See *Second Report*, 2 FCC 2d at 770-771.)

45. There are further important considerations here: Thus, while as stated there is an argument concerning the likelihood of UHF independent stations as we go below the 50th market, we think it important to eliminate the unfair competition factor vis-a-vis all stations in as many markets as possible. Though competing considerations should be weighed in underserved areas and thus different policies developed there (see pars. 57 and 58), the top 100 markets generally do not fall in this category. (*Second Report*, 2 FCC 2d at 783.) Moreover, we are here concerned with what should be in our proposed Notice, keeping in mind that we wish to process during the pendency of the rulemaking proceeding (see par. 51, *infra*). This, in turn, clearly calls for adherence to the 100 largest television markets, since while we can always open a market to unrestricted CATV operation with distant signals (i.e., operation without retransmission authorization), it is difficult, and indeed could be impracticable, to halt or roll back such an operation, once entrenched. See *Second Report*, 2 FCC 2d at 782; *Memorandum and Opinion on Reconsideration*, 6 FCC 2d 309, 317.

46. Finally, we are also seeking to encourage a new kind of CATV operation in the largest markets—one which may well bring a new dimension of diversity to these markets. See part III of this Notice. That being so, there is also the fundamental policy question whether the public interest in the relatively large markets—i.e., the 100 largest—would be better served by CATV operating in the new fashion, as is proposed in part III of this Notice, and as we are seeking to promote in San Diego, the 50th market, or by CATV operations with distant signals, without the requirement of retransmission consent. We recognize that this is a complex issue, and request comments thereon. It is however, an additional policy reason for adhering to the 100 largest markets during this period while the matter is being resolved.

47. We have also determined that it would be more appropriate, in the interest of a clear and definitive rule, to list in the rule the relevant major television markets, on the basis of the 1967 rating of the American Research Bureau (ARB) based on net weekly circulation.<sup>21</sup> The ARB rating may vary somewhat from year to year, and this could be most disruptive in the few markets involved. We therefore propose the definitive and fixed list. We have also set forth in our proposal the

<sup>21</sup> While the 1968 ratings have now been issued, we think that it would cause less disruption to continue to use the ratings which have been in effect during most of the last year.

note, have imposed a considerable burden upon the Commission and the participating parties.

42. In sum, the Supreme Court has sustained the Commission's jurisdiction over CATV systems and its authority to take regulatory action "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." (*United States v. Southwestern Cable Co.*, supra, at 178.) We conclude that it would not be consistent with such responsibilities to permit the growth of substantial CATV operations carrying distant signals in major markets until the aspect of unfair competition is eliminated.

43. Accordingly, the Commission proposes to close down the burdensome major market hearings except for those few involving issues other than impact upon the local broadcasting stations, where hearing on such issues might still be appropriate, and to proceed to elimination of the unfair competition aspect, either upon the basis of this rule-making proceeding or upon congressional action on copyright-communications legislation. The Commission therefore proposes to adopt a policy, embodied in the attached proposed rules, which will clearly delineate the areas where carriage of distant signals is authorized only upon satisfaction of the requirement for retransmission consent of the originating station. The proposed major market rules would apply across the board and do away with the necessity for case-by-case consideration in evidentiary hearing or upon petition for waiver. Should the rules be adopted and then there be enactment of a new law, the Commission would, of course, reconsider its regulations in light of the new situation and the congressional guidance.

#### *Top 100 markets*

44. We are proposing to adhere to the 100 largest television markets as the basic dividing line. These are the markets where UHF independent stations are most likely to develop and the unfair competition problem would be most significant. It can be argued that as we go below the 50th market the likelihood of imminent UHF activity becomes smaller. But fourth stations have already developed in many of the top 50 (including San Diego, the 50th market) and this could have a snowballing effect on UHF development in the markets below 50.<sup>20</sup> It has been the Commission's experience that broadcasters generally seek to enter first the markets offering the largest audience potential and then turn to smaller markets as the more attractive locations become saturated. By the same token, as noted in the *Midwest* case, if UHF's chances for success in the smaller markets are more marginal, the "likelihood of serious adverse impact from any substantial CATV penetration is correspondingly greater" (*Midwest Television, Inc.*, 13 FCC 2d at 493). Moreover, the increasing availability of programming for independent stations in the top 50 markets may well stimulate new independents in the 50-100 markets. In addition, it is hoped that the promise of satellite technology as an economic means of providing service from one transmission point to

<sup>20</sup> We note that considerable interest has been expressed in the UHF facilities allocated to the top 100 markets. See app. B hereto.



and reasonable revision as to CATV. Such a revision may well reflect not just copyright but also communications and antitrust policies (see *Fortnightly* case, 392 U.S. at p. 401). Indeed, section 111 of H.R. 2512, dealing extensively with CATV copyright matters, was not passed by the House largely because it had not been considered by the committee charged with communications policy. (See 113 Congressional Record H3624-3626; 3636-3637, 3644-3647, 3857-3859; cf. *Fortnightly Corp. v. United Artists*, 392 U.S. at 401, footnote 33.) In short, any revision, dealing as it must with concepts such as adequately and inadequately serviced areas, originations, etc., might well be a meld of copyright, communications and antitrust policies. It would thus constitute, to a significant degree, the legislative guideline which the Commission has long sought and would welcome in an important new field such as CATV.<sup>10</sup> The Commission would, of course, cooperate fully in this most important congressional endeavor.

40. As stated, we must take the above consideration into account. For, our retransmission proposal, while stemming from our responsibilities under the Communications Act (see *United States v. Southwestern Cable Co.*, supra), necessarily also embodies considerations like copyright in its practical applications. (Cf. *Report on Rebroadcasting*, 17 F.R. 4711, 17 F.R. 10309.) Since Congress is considering the copyright matter, we should afford the opportunity for congressional resolution of the unfair competition aspect, particularly since, as discussed, such resolution would constitute the congressional guidance sought in this important area. We therefore propose to proceed with our rulemaking proceeding, to obtain comments and reply comments, and to be in a position to take definitive action. We shall, however, not take such action until an appropriate period is afforded to determine whether there will be congressional resolution of this crucial issue of unfair competition, with indeed congressional guidance in this whole field.

41. In view of the foregoing, it is clear that our policy of holding evidentiary hearings in the top 100 markets should be revised. First, the hearings have served their purpose, by giving us added insight. In the light of that insight and the conclusion we now reach on the unfair competition aspect (par. 36, supra), continuation of the hearings on the economic impact issue would serve little useful purpose. The unfair competition aspect must be eliminated. When it is eliminated, a new type of CATV operation would appear likely to eventuate in these major markets. Indeed, this new type of CATV operation is largely the basis for other parts of this Notice. (See pts. III and V.) Whether or what further regulation of this new type may be necessary because of other public interest considerations, we cannot say, since we cannot now foretell precisely the nature of the new operation, nor, if it should eventuate, the congressional guidance embodied in any new copyright-communications legislation. Clearly, then, it makes little sense to continue these lengthy, complex evidentiary hearings on the economic impact issue—hearings which, we also

<sup>10</sup> See, e.g., Notice of Inquiry and Notice of Proposed Rulemaking in Docket No. 15971, 1 FCC 2d 453, 464, 465-466; Second Report, 2 FCC 2d at 734, 737.



name of each community in the market from which a 35-mile zone is to extend, where we believe it to be appropriate in view of the nature of the market.

*Fixed mileage standard*

48. We are also proposing to adopt a mileage standard, in place of the grade A contour, for measuring the area in which carriage of distant signals is permitted upon the retransmission consent condition. The predicted grade A contour varies from station to station and may go out as far as 60 miles from the station's transmitter. A fixed mileage standard, which would be adhered to in every case, would have the advantage of administrative ease and provide certainty to the affected industries. A zone measured by air miles from the main post office in the designated market community can be readily calculated without resort to contour maps in the Commission's files or the necessity for evidentiary hearing to resolve disputes. The zone proposed in the attached rules is the area extending 35 miles from the main post office in each of the market cities designated in the major market listing. This would protect the essential area for stations' development in the market against unfair competition, largely avoid the cumulative impact aspect, and preserve the basic integrity of the major markets from an allocations standpoint. In connection with this latter aspect, we stress that from a practical or allocations standpoint, it makes no sense to preserve the main city itself and let CATV operate with distant signals (without the retransmission consent being required) in adjacent or relatively nearby smaller communities. Rather, proper allocations procedure calls for this adoption of an appropriate zone around the main city or cities, with all TV homes within the appropriate zone treated alike. Finally, we note that the 35-mile zone accords generally with our waiver practices under the present section 74.1107(a).

*"Footnote 69" situations*

49. We are proposing further to codify in the rules the so-called "footnote 69" situation; i.e., where a central metropolitan area of one major market falls within the predicted contours of stations in another major market, so as to avoid the San Diego type of hearing and preserve the local character of such markets against the element of unfair competition. For this purpose it appears that the same 35-mile zone may be appropriate. The attached rules would prohibit a CATV system operating in a community located wholly within the 35-mile zone of a television station in a major market from carrying the signal of a television station in another major market unless the community of the system is also located wholly within the 35-mile zone of the station in the other market or unless the retransmission consent requirement is fulfilled. This would eliminate the unfair competition aspect as to the local market stations in the essential area where their off-the-air signals are of higher grade than those from the other market, while not affecting CATV carriage of signals from both markets in the area where such signals are of approximately equal grade or in the area which lies outside the 35-mile zones. And, here again, allocations policies would be furthered. (See discussion, par. 48,

supra.) We recognize that arguments can be advanced for other mileage proposals—for example, for a 40-mile zone, with a 30-mile zone in the "footnote 69" situation, or for an across-the-board 30-mile zone. It is our tentative judgment that the 35-mile zone is most appropriate, and we have therefore used that standard in the proposed rules (and also as our interim guideline—see par. 51). We specifically invite comment on this aspect.

50. We also recognize that in drawing lines of this nature there will inevitably be some borderline cases which might more appropriately fall on the other side of the line. But the thrust of the proposed rules is to cover the crux of this matter, rather than to achieve a multiplicity of refinements tailored to the precise circumstances of all conceivable situations. The latter course would simply perpetuate the present burdensome hearing and waiver procedure with its unpredictable consequences. We think that the goals of certainty and administrative ease to be obtained from strict adherence to a definitive policy outweigh any advantages that might flow from flexible administration with its attendant drawbacks. Therefore, the proposed rules do not contemplate the grant of waivers.<sup>22</sup>

#### *Interim procedures*

51. We turn now to the procedure to be followed by the Commissions while this rulemaking is pending. Effective upon the issuance of this notice, the Commission will halt the hearing process in all top 100 market proceedings (including those with a "footnote 69" issue) wherever it stands, even at the Review Board or Commission level.<sup>23</sup> There is no point in requiring the parties and the Commission to expend the resources and effort necessary to continue such hearings if the definitive policy is to supplant that process. We will also stop processing petitions for waiver of the hearing requirement. However, parties to pending hearings, and those who have pending petitions for waiver, or who desire to file new petitions for waiver of the existing section 74.1107(a), may request authority to commence distant signal operations which would be permissible because they fall outside the zones in the attached proposed rules. The Commission will grant such requests only if they are entirely consistent with the proposed rules. We believe it appropriate to proceed this way, since, as stated, waiver policies under the existing rules have largely paralleled the proposed 35-mile zone. Action on all other requests for authority or petitions for waiver to carry signals coming within the hearing requirement of the existing rules will be held in abeyance pending the outcome of this proceeding. We would, however, consider the authorization, during this interim period, of some operations within the proposed 35-mile zone by systems which would operate in accordance with the retransmission consent requirement of the proposed rules. We believe that authorization to effect this waiver in some instances would give us valuable information concerning the actual operation

<sup>22</sup> We have in mind the past situation where waivers were sought in the ordinary course pursuant to sec. 74.1109. The provisions of sec. 1.3 of the Commission's general rules of practice and procedure are applicable, of course, to every rule of the Commission.

<sup>23</sup> We will, however, consider the appropriateness of resolving issues in hearings which do not involve the question of impact upon broadcasting stations.

of systems under the proposed rules and thus would assist us in resolution of the rulemaking.

52. CATV systems now carrying grade B signals from a major market within the grade B contour of a station in another major market, or those proposing to do so, are not proscribed by the existing rules except where the filing of a timely section 74.1109 petition continues the operative effect of section 74.1105(c). Commission action on pending and future section 74.1109 petitions of this nature will be held in abeyance pending the outcome of this proceeding. However, a CATV system may request relief from the proscription of section 74.1105(c) in order to carry such signals in areas which would be permissible under the attached proposed rules. Such relief will be granted only to the extent that the request is entirely consistent with the proposed rules and with the public interest, as evidenced by the considerations in the particular case.<sup>24</sup>

53. We are proposing to "grandfather" the present service of CATV systems which would otherwise be prohibited or restricted by the proposed rules, in order to avoid substantial disruption to the CATV subscribers.<sup>25</sup> The proposed grandfathering date is the date of publication of this *Notice* in the Federal Register (Dec. 20, 1968). Thus, any rules adopted would be applicable upon their effective date to all CATV service commenced after December 20, 1968, including service not barred by section 74.1105(c). However, in the event that the rules finally adopted differ from the proposed rules, service authorized by the Commission to commence during the pendency of this proceeding will be grandfathered; also grandfathered is any service previously authorized by the Commission, whatever the commencement date of such service.

54. We believe that the proposed rules and the interim processing procedures outlined above are necessary to the effective performance of the Commission's responsibilities for the regulation of television broadcasting and the proper dispatch of the Commission's business (sec. 4(j) of the act). At the same time, we are not unmindful of the promising potential of CATV and the cable technology as a means for increasing the number of local outlets for community self-expression, for augmenting the public's choice of programs and types of program service, and for providing a variety of other communications services. Parts III and V of this proceeding are directed toward the broader and more important questions of how best to obtain, consistent with the public interest standard of the Communications Act, the full benefits of CATV for the public and what Commission actions or legislative recommendations would be appropriate to encourage such development. Those parts may well determine basic issues as to the long-range structure of the cable industry and its relationship to the broadcasting and communications common carrier industries. The proposals in this part are required by present circumstances and are interim in nature, in the sense that if relevant legislation is forthcoming,

<sup>24</sup> The procedures to be followed in filing requests pursuant to para. 51-52 of this notice, and responsive pleadings thereto, are the same as those set forth in sec. 74.1109 (b), (c) and (d) of the existing rules.

<sup>25</sup> Such "grandfathering" does not, of course, include present service which is in violation of our existing rules.

or if there are new significant industry changes or some revolutionary technological development, the Commission will of course reexamine this matter upon the basis of the new circumstances.

*C. Distant signals in smaller television markets*

55. We are not proposing any blanket prohibition against carriage of distant signals or blanket retransmission consent requirement in the television markets below the top 100, for the reasons already developed (see note 18, above), except as indicated in paragraph 57 below. However, we will continue to examine such markets on an ad hoc basis, upon petition filed pursuant to section 74.1109.<sup>26</sup> With the end of the hearing load in the major market proceedings, the Commission hopes to be able to devote more attention to the smaller markets and to take such action as may be appropriate (including any evidentiary hearings required to resolve disputed issues of fact) in those few instances where there is a substantial public interest showing, e.g., that a proposed new station would be independent or largely independent in operation or that the cumulative effect of existing and proposed CATV operations in the market would jeopardize the likelihood of obtaining or retaining a network affiliation or of maintaining audiences large enough to attract needed advertiser support. Most important, we are proposing to adopt rules regulating the carriage of distant signals in the smaller markets which may substantially alleviate potential problems in such markets and thus cut down greatly upon the need for any evidentiary hearings in this respect.

56. While recognizing the need for underserved areas to obtain additional services through CATV systems, the Commission is concerned lest CATV should undercut our basic allocations policies and structure by importing signals from unnecessarily distant centers or in such quantity as to unduly fractionalize the relatively small potential audience of stations in these smaller markets. Thus, a substantial question is presented as to whether it is consistent with fundamental allocations policies to permit CATV systems to engage in the practice of "leapfrogging," e.g., to bring the signals of Los Angeles stations into Texas or the signals of New York City stations into Ohio instead of carrying the signals of stations of the same type that are located closer to the system and thus are much more apt to have regional or in-State programming more attuned to the needs and interests of the community. Further, such "leapfrogging" with its concentration on the signals of the large cities such as New York and Los Angeles, raises questions of diversification of media of mass communications. To deal with these questions, we put forth for comment the proposal that communities being inadequately served should receive additional service from the nearest full network, independent and educational stations in their region, or within the same State. Moreover, a serious question is raised when such additional services are supplemented by further network or independent signals from more distant centers where the CATV system is located within the 35-mile zone of local stations providing the only television service available to persons within their service areas

<sup>26</sup> The same policy will apply also to areas outside the specified zones in the top 100 markets.



who are not served by CATV systems. There is the danger that a plethora of competing signals, brought in wholly without regard to the "fair competition" concept integral to the retransmission consent requirement, may cause a loss of deterioration of service to the substantial portion of the public dependent upon television broadcast stations—a loss which would outweigh any incremental value of the extra signals to the CATV subscribers for the reasons set forth in the *First and Second Reports*.<sup>27</sup> At least, in view of the burgeoning proposals to bring, for example, Los Angeles signals into the Mountain or Southwestern States, this is a matter warranting thorough exploration.

#### *Within specified zones*

57. The attached proposed rules would permit a CATV system operating within the 35-mile zone of a station in a smaller market to carry only such distant signals as may be necessary to furnish its subscribers (counting local signals) the signal of one full network station of each of the national television networks and one independent station,<sup>28</sup> provided that the supplementary distant signals were obtained from the closest source in the region or in the State of the system. The system could also carry the signal of any independent station that subsequently commences operation at a location closer to the system, and the signals of any in-State or nearby educational stations in the absence of objection by local or State educational interests. However, carriage of other distant signals would be prohibited, unless the CATV system has the retransmission consent of the originating stations with respect to such additional signals. See proposed section 74.1107(d) in appendix C. Based upon our experience, systems operating with the above number of signals in the smaller markets have been successful, and indeed operation with such numbers is very frequently encountered. In those few instances where a more varied operation may be appropriate, we stress again the origination aspect (see pt. III herein). The proposed limitation in this paragraph thus also complements the Commission's determination that originations serve the public interest.

#### *Outside specified zones*

58. CATV systems located outside the 35-mile zone of any station in a major or smaller market would be permitted to carry such distant signals as they chose so long as they refrained from leap-frogging; i.e., did not carry a more distant station before carrying a closer station of the same type (e.g., full network stations of the same network, independent or educational stations). Since some flexibility may be appropriate in the administration of the latter provision, the proposed rules contemplate the grant of waivers for good cause shown; e.g., that the more distant station is located in the same

<sup>27</sup>In this connection, we also note that while the nonduplication requirement is effective as to network programing, roughly 45 percent of a network affiliate's time is devoted to nonnetwork material; and it is this segment which is particularly vulnerable to continued fractionalization by a plethora of distant signals.

<sup>28</sup>The question of whether a station, which is not affiliated with a national network, qualifies as an independent station within the meaning of this section would be treated on petition pursuant to sec. 74.1109.

State or that the system's subscribers have a greater community of interest with the region of the more distant station. See proposed section 74.1107(e)(2). Here again the systems could, and under the proposal in part III herein, would originate. Indeed, we would expect such originations to be facilitated to some extent by the fact that nearby systems within the 35-mile zone might well be engaged in originations.

*Grandfathering and interim procedures on microwave applications*

59. As in the case of the major market provisions, the Commission is proposing to grandfather existing CATV service in the smaller markets and outside the specified zones, in view of the general impracticability of going back to the specified service. The proposed grandfathering date is the same; i.e., the date of publication of this *Notice* in the Federal Register (Dec. 20, 1968). Since any rules adopted will be applicable upon their effective date to all CATV service commenced after December 20, 1968, CATV systems commencing operations inconsistent with the proposed rules during the pendency of this proceeding will do so at their own risk. Many of the distant signals covered by the proposed rules would involve microwave authorizations. In view of the substantial public interest questions posed by microwave applications to relay signals which would be inconsistent with the proposed rules and in order to avoid unnecessary disruption to the public, Commission action on inconsistent applications for new microwave service to a CATV system will be held in abeyance during the pendency of this proceeding. Consistent microwave applications will be processed and considered by the Commission in normal course, and any service provided pursuant to such a grant will be grandfathered. Where the microwave application is for service to a system located outside of the 35-mile zone of any station, the Commission will consider applications containing requests for special relief along the lines contemplated by section 74.1107(e)(2) of the proposed rules in appendix C, in order to maintain its flexibility during the interim period to take action consistent with the public interest in the particular circumstances.

*V. General Areas of Inquiry*

60. The possibility of a multipurpose local CATV communications system, and of national interconnection of such systems (see pt. II above), raises a number of questions pertinent to the Commission's responsibilities and national communications policy, which not only must be considered in the context of the immediate issues before us relating to CATV systems, but affect other areas as well.<sup>29</sup> It is difficult to be specific in an area of rapidly changing technology and before concrete proposals have been advanced, the identity of those willing and able to provide various services has been ascertained, the services have come into being, and public demands and preferences are known.

<sup>29</sup> Some of the potential services that have been suggested for cable systems (see pt. II above) obviously could have far-reaching social and economic implications and broad impact on industries and institutions not subject to the Commission's jurisdiction. We intend to explore these issues in the context of the discharge of Commission's responsibilities.

Nevertheless, at least the following general questions occur to us initially:

(1) What is the appropriate relationship between CATV, communications common carriers, and other entities (e.g., the broadcasters, computer industry, etc.) which now provide, or may in the future seek to provide, communications services in the locality?

(2) What is likely to be the nature of the services that could be offered to the home or business under present and anticipated technology, and how would home and business requirements for communications facilities differ in light of services that might be economically practicable only for business use?

(3) Would the public interest be best served for the immediate future by:

(a) Permitting or encouraging the entry of all would-be newcomers, services, technologies, and facilities in an atmosphere of free competition, letting the market place determine the survival of the fittest, subject to such minimum regulation as may presently be required in the execution of the Commission's statutory responsibilities and to such future regulation as may become necessary or desirable in the public interest or as a result of legislation; or

(b) Permitting tests of different systems or services by different entities in various cities to afford some basis in experience for decisions as to the best ultimate structure before any particular system or service becomes established on a widespread basis; or

(c) Undertaking to devise a master plan now, before new facilities and services are inaugurated, to guide their development?

(4) Is it necessary or desirable that there should ultimately be a single cable (or bundle of cables) providing multiple means of communication to and from the home and/or business and, if so, should the complete system be owned by one entity or should there be diversity of ownership or control of some aspects of such a multipurpose communications system (e.g., joint ownership or indefeasible right of use)? What considerations should govern access to such system by communications common carriers and others offering communications services to the public? What should be the nature of the service offering by the entity or entities which would provide the cable (or bundle of cables) to the home?

(5) Is it necessary or desirable that there be multiple facilities providing means of communication to and from the home or business—e.g., some combination of radio, cable and wire—and, if so, what kinds of services should in general be provided by what kinds of facilities?

(a) Is it technically and economically feasible for CATV to provide some two-way services, particularly two-way video, and switched services to and from the home and/or business and, if so, what would be the role of such services vis-a-vis other services such as videotelephone service?

(b) Assuming that some services could be provided by the facilities of more than one entity (by communications common carriers such as the telephone and telegraph companies, by CATV or some other enterprise), should duplication of facilities and competition in the provision of services be permitted, at least initially, or should there be some allocation of services among different entities?

(c) Assuming multiple facilities owned by different entities, would it be necessary or desirable to have a common junction at the premises of the consumer to facilitate interconnection of facilities and the provision of some services one way by one facility and the other way by another facility?

(d) Assuming multiple facilities owned or controlled by different entities, would it be necessary or desirable that the entire complex (or an essential portion thereof) be engineered according to uniform standards or by one entity to further technical compatibility, efficiency and economy?

(6) What facilities would be necessary or desirable for transmission through the streets, as opposed to from the street to consumer's premises.

and what are the comparative advantages or disadvantages of radio, cable, or some other mode?

(a) Should there be a variety of intracity distribution systems or only one and, if the latter, of what nature?

(b) Assuming a single intracity distribution system and a single cable (or bundle of cables) providing access to the premises of the consumer, should the complete system be owned by one entity or should there be diversity of ownership and control of some aspects? In either event, should there be limitations on common ownership or control of facilities in different cities?

(c) Apart from the question of ownership and control of facilities, should all entities desiring to provide a communications service to the public have nondiscriminatory and equitable access to the local distribution facilities for the purpose of so doing and, if so, on what basis?

(7) How should the local communication system or systems tie into inter-city terrestrial and satellite facilities?

(8) What technical standards would be necessary or desirable to achieve national and local compatibility and good quality service to the public?

(9) How could the same communications services available to homes in the city be provided to homes in rural or other areas not now economically reached by cable?

(a) To what extent could this problem be alleviated by the use of radio links such as those involved in the experimentation of Teleprompter Corp. and Chromalloy American Corp. (see footnote 6 above).

(b) Would it be necessary or desirable for the Federal Government to subsidize construction of communications facilities in rural areas in a program akin to rural electrification?

(10) What should be the division of regulatory functions between Federal and State or local authorities with respect to the local communications system or systems; e.g., construction of facilities, terms and conditions of access by those offering communications services, services and charges to the public, licensing, etc.?

(a) Which aspects of the local system or systems would require uniformity and centralized regulation or would be important to the effectuation of national communications policies, which aspects would be primarily of local concern and appropriately subject to State or local regulation, and which aspects might better be left unregulated?

(b) What amendments to the Communications Act of 1934 might be necessary or desirable to effectuate the public interest and national communications policies in this area?

61. The foregoing merely touches on some of the questions which occur to us initially and is by no means an all-inclusive listing. Among other things, the Commission is also concerned about the effect of potential new specialized communications developments on present communications technologies and services and, particularly, the social, political, and economic considerations raised by such developments. We recognize that these questions range over a broad field. Moreover, it is apparent that the field is one of many variables, difficult to assess at this time. These questions have implications which may affect the resolution of our specific rulemaking proposals and should be kept in mind by persons commenting on parts III and IV herein. As stated at the outset, we believe that a continuing inquiry is needed, with the ability to take action at different phases as the problem becomes clarified and the need for action is shown. Accordingly, to inaugurate the discussion, interested persons are invited to comment on the questions indicated above and to suggest other problems and possible courses of action in this complex field.



## VI. Miscellaneous

62. In view of the matters encompassed in this proceeding, the Commission is concurrently issuing an order terminating the proceeding in docket No. 15971. Matters at issue in docket No. 15971, which have not been resolved or which have not been specifically mentioned in this *Notice*, can be raised in this proceeding. (See, e.g., *Notice of Inquiry and Notice of Proposed Rulemaking in Docket No. 15971* (30 F.R. 6078), par. 63, concerning the effect of CATV distribution of aural signals on local standard broadcast or FM radio stations.)

63. Since the proposed rules discussed in part IV above, and set forth in appendix C hereto, are intended to embody a clear-cut and definitive policy, particularly in the major markets, interested persons are requested to point out in their comments any respects in which the proposed provisions appear ambiguous or open to factual dispute.

64. It should be noted that the Commission is proposing in appendix C to make an editorial change in section 74.1103(d) to make explicit a requirement embodied in the present rules. In the *Second Report* the Commission stated that the carriage provisions contained an implicit requirement that CATV systems "refrain from deleting or altering any portion (including advertising) of signals carried pursuant to the rules" except as required by the program exclusivity provisions (2 FCC 2d at 753, 756). The Commission further stated that it would so rule upon complaint (2 FCC 2d at 756). While no explicit statement in the rules was then deemed necessary, we now think that an express provision may be helpful in avoiding any possible misunderstanding as to the existing obligation of the CATV system.

Authority for the proposed rulemaking and inquiry instituted herein is contained in sections 2, 3, 4 (i), (j), and (k), 301, 303, 307, 308, 309, and 403 of the Communications Act; cf. also sections 315, 317, and 325(a) of the Communications Act.

65. In view of the importance and complexity of the issues in this proceeding, the Commission intends to afford oral argument at an early date to assist in crystalizing the issues prior to the submission of written comments, and may schedule further oral argument after consideration of such comments. Oral argument on all matters discussed in parts III and IV herein will be scheduled to be held during the latter part of January 1969; oral presentations may be made by interested persons (such as industry spokesmen) or their attorneys. All interested persons are invited to file written comments on the rulemaking proposals set forth in parts III and IV herein and in appendix C on or before March 3, 1969, and reply comments on or before April 3, 1969. In view of the importance of a prompt resolution of various aspects of the rulemaking proposals in part III, the Commission expects to adhere to the filing times for comments on part III, absent a compelling showing of unusual circumstances. Comments on the inquiry in part V herein may be filed on or before June 16, 1969, and reply comments on or before August 15, 1969. In reaching its decision in this matter, the Commission may also take into account

any other relevant information before it, in addition to the comments invited by this *Notice*. The Commission, after consideration of the comments, will also determine whether further oral argument should be scheduled.

66. In accordance with the provisions of section 1.419 of the Commission's rules and regulations, an original and 15 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission.

FEDERAL COMMUNICATIONS COMMISSION,  
BEN F. WAPLE, *Secretary*.  
15 F.O.C. 2d

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## APPENDIX A

INSTRUCTIONS  
(FCC Form 325)

1. The certificate is to be signed by the individual owning the system, if individually owned, by a partner, if a partnership, or by an officer of the corporation, if the report is prepared for a corporation.
2. List in Block 03 the community currently being served by this CATV system, the total population in the community, and the state and county where the community is located. If more than one community is being served, give data for each community. Record also the total number of subscribers in each community served by the system. In stating the number of subscribers, insofar as apartment house installations are concerned, count each apartment unit receiving service (estimate where the exact total is unknown). In all other instances (hotels, motels, etc.), count as one installation or subscriber. If more space is needed, continue on a separate sheet.

List in Block 04 the total population in the communities and the total number of subscribers.

3. Attached is the most recent listing of the top 100 television markets as ranked by American Research Bureau. The markets are listed alphabetically. If you have a question as to whether your system is located within the predicted Grade A contour of a television station in the largest 100 television markets, please write to the Commission. Such requests for information will be afforded expedited action.
4. If the reporting individual, partnership or corporation is a broadcast permittee or licensee and has filed the ownership report called for by the Commission's rules, then the information requested in Blocks 09, 10, 11, and 14 need not be filed. Instead, simply indicate that such information is on file with the Commission, specifying date and file number, if any.

If the reporting system is a corporation, supply the information requested of corporations in Block 08 and the succeeding blocks. The system is requested to include the information to be furnished by the other corporations named in Blocks 08e and 08f, or to indicate that such corporations have been requested to supply directly the information to the Commission.

The reporting system and each corporation listed in Blocks 08e and 08f are requested to supply for its officers or directors, whether they own stock or not, and for stockholders having an ownership interest of 5% or more the information called for in Blocks 09, 10, 11, 12, 13, and 14. If the reporting corporation does not have the information concerning the interest of stockholders owning a 5% interest or more of the appropriate corporations and the close relatives of such stockholders, it is requested that the reporting corporation furnish each such stockholder with a separate set of pages 4 through 7 of this form (with the information requested in Block 09 filled in) and request the stockholder to fill in the information requested in Blocks 10 thru 14 and file the material with the Commission. If the corporation does not have the social security or IRS information requested in Block 09, the stockholder should be requested also to fill in that part of the Block 09.

Additional sets of pages 4 through 7 of this form may be obtained from the Commission upon request. When the information is submitted separately by a stockholder or a parent corporation, the information contained in Blocks 10, 11, 12, 13 and 14 shall be certified by signing and dating page 7.

Where stock is held temporarily by a stockholder in a street name, this fact should be noted, but no further information concerning such stockholder need be furnished.

(DO NOT RETURN THIS INSTRUCTION SHEET TO THE COMMISSION)

SUBMIT ONE ORIGINAL COPY TO:

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

CATV INFORMATION REPORT

I certify that I am \_\_\_\_\_ of  
(Position with CATV system)

\_\_\_\_\_  
(Exact legal title or name of the CATV system as shown in item 04.)

that I have examined this report and read the instructions; that to the best of my knowledge, information, and belief, all statements of fact contained in the report are true and the report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth herein. (See Instruction No. 1).

\_\_\_\_\_  
(Signature of person certifying report)

\_\_\_\_\_ 1966

Willful false statements on this report are punishable by fine or imprisonment. U. S. Code, Title 18, Section 1001.



## Federal Communications Commission Reports

CATV INFORMATION REPORT (Refer to instructions on last page of this form)										
FCC Form 337										
2 of 7										
Name and post office address of the CATV system (fill out a separate report for each CATV system)										
01	Name	Street address	City	State	Zip code					
Name and address of person to receive communications concerning this system if other than above										
02	Name	Street address	City	State	Zip code					
Service Data (Refer to instruction Number 2)										
	Community served	Population (1960 Census)	State	County	Total No. of Subscribers	Date Service Began	Total Channel Capacity			
a.										
b.										
c.										
d.										
03						b. No. of subscribers				
04	e. Total population									
Provide the following information concerning television stations carried on your CATV system										
Station call letters		City	State	Broadcast	Cable	Reception of signal (check)				
						Off-Air				
05		a.								
		b.								
		c.								
		d.								
		e.								
		f.								
		g.								
		h.								
		i.								
		j.								

# CATV INFORMATION REPORT

(Refer to instructions on last page of this form)

3 of 7

Additional services. Enter under column "Now" the number of channels currently used to transmit the respective service. If you have made a public announcement of plans to provide in the future additional services, enter under the column "Announced" the number of channels you intend to use to transmit such service. Also enter the total number of hours per week [to the nearest hour] devoted and announced to be devoted to each such service. "Program Origination: Local (live) events" (block 06-e) includes any local program which uses live talent exclusively, including any local program recorded by the system for later transmission by the system. Programs furnished to the system by others are not local live programs.

TYPE	NOW		ANNOUNCED	
	No. of Channels	Hours/week	No. of Channels	Hours/week
a. Time and weather				
b. FM				
c. News Ticker				
d. Program Origination: Film				
e. Program Origination: Local (live) events				
f. Other (Specify):				

06

Top Markets Information: (See Instruction No. 3)

7a. Is the system located in a community or communities within the predicted Grade A contour of a station in the 100 largest television markets (as ranked by American Research Bureau on the basis of net weekly circulation of the largest station in the market)?

Yes ☐ No ☐

7b. If you have answered "Yes" to 7a, state the total number of subscribers to the system on February 15, 1966:

(Total No. of subscribers)

7c. If you have answered "Yes" to 7a, you are requested to retain in your files the information which will enable you to prepare a map showing the location, by street, of all cable lines which were being used to serve subscribers on February 15, 1966.

THE REMAINING PAGES OF THIS FORM NEED NOT BE SUBMITTED, if the total number of subscribers to the CATV System as shown in Item 7b above is less than 500 and the population of the Community served is less than 5,000.

35

<b>FCC Form 323</b> <b>4 of 7</b>	
<b>CATV INFORMATION REPORT</b> (Refer to instructions on last page of this form)	
When stockholders named in Block 09 and corporations named in Blocks 08e and 08f submit separate sets of pages 4 through 7 of this report (see instruction 4), repeat here the name of the CATV System as it appears in Block 01:	
Organization Information	Number of persons having ownership interest in this CATV System If less than 50 give number <span style="margin-left: 50px;">(a)</span> If more than 50 check box <span style="margin-left: 50px;">(x)</span>
(check appropriate box to indicate type of this CATV organization) a. <input type="checkbox"/> Individual b. <input type="checkbox"/> Partnership c. <input type="checkbox"/> Corporation d. <input type="checkbox"/> Other	Is there any corporation owning 50% or more of the stock of this CATV? If "Yes", give name of corporation:
e. <input type="checkbox"/> Is the corporation named in 08e in turn owned 50% or more by another corporation? If "Yes", give the name of each such other corporation, to and including the final parent corporation owning 50% or more:	Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
A separate set of pages 4 thru 7 of this form must be submitted for each corporation named in 08e and 08f above (see instruction 4)	

Name of organization reporting below:

For partnerships, list the name, social security or Internal Revenue No., address and percent of interest in the partnership of each partner. For corporations, list all officers and directors (whether they own stock or not), and stockholders who own 5 percent or more interest in the corporation. For each entry, if that person is a director, place a check mark in the space for that line in the column headed "Dir.," If an officer, enter the title or principal title, if that person has more than one. If an ownership interest exists, record this to the nearest whole percent based on the total number of shares of voting stock outstanding, exclusive of treasury stock (see instruction 4).

[illegible]

# CATV INFORMATION REPORT

(Refer to instructions on last page of this form)

FCC Form 325

5 of 7

Is there any close family relationship (i.e., husband, wife, father, mother, brother, sister, son or daughter) between any of the officers, directors or stockholders listed in block 09?

If "Yes", state below the names of the persons, the relationship, and the name of the related person.

Last	Name		Social Security or I R S No.	Relationship	Name of related person	
	First	Last			First	Last
10						

Yes ☐ No ☐

Is any of the corporate stock listed in block 09 held for any other person who is the beneficial owner of stock of this corporation?

If "Yes", state below the name of the beneficial owner and the name of the fiduciary.

Last	Name		Social Security or I R S No.	Name of officer, director or stockholder having a fiduciary relationship.	
	First	Last		First	Last
11					

Yes ☐ No ☐





## CATV INFORMATION REPORT

(Refer to instructions on back last page of this form)

7 of 7

13 Has any person named in blocks 09 or 11 been found guilty of any felony in any federal or state court within the past 10 years?

If the answer is "Yes," submit as Exhibit No. \_\_\_\_\_ a statement disclosing the person and matters involved and identifying the court and proceeding (by date and file numbers).

Yes ☐ No ☐

14 If any of the persons listed in block 09 or 11 are aliens, submit as Exhibit No. \_\_\_\_\_ a list of their names and respective addresses.

If the information requested in blocks 10, 11, 12, 13, and 14 is submitted directly by a stockholder, as provided by Instruction No. 4, such stockholder should sign and date this page in the space indicated below.

I certify that the information contained in blocks 10, 11, 12, 13, and 14 is true and correct to the best of my knowledge and information.

\_\_\_\_\_  
(Name of stockholder if submitted for stockholder)

\_\_\_\_\_  
(Signature of stockholder if submitted by stockholder)

\_\_\_\_\_  
(Name of parent corporation supplying information directly)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of person signing for parent corporation supplying information directly)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

Willful false statements on this report are punishable by fine or imprisonment. U. S. Code, Title 18, Section 1001.

Attachment to FCC Form 325  
(see instruction 3)

(DO NOT RETURN THIS LISTING TO THE COMMISSION)

# ALPHABETICAL RANKINGS OF TOP 100 TV MARKETS - 1965 ARB

Market	Rank	Market Area Commercial TV Stations
Albany-Schenectady-Troy, N.Y.	37	WAST, WRGB, WTEN
Albuquerque, N.M.	100	KGBM-TV, KOAT-TV, KOD-TV
Altoona, Pa. (see Johnstown-Altoona)		
Asheville, N.C. (see Greenville-Spartanburg-Asheville)	16	WAGA-TV, WAIL-TV, WSB-TV
Atlanta, Ga.	96	WBFB, WRDQ-TV
Augusta, Ga.	11	WBAL-TV, WJZ-TV, WHAR-TV
Baltimore, Md.	85	WAFB-TV, WBRZ
Baton Rouge, La.		
Bay City, Mich. (see Saginaw-Bay City-Flint)	82	WBJA-TV, WHRR-TV, WHBF-TV
Birmingham, N.Y.	39	WING, WHY-TV, WBRG-TV
Birmingham, Ala.	5	WBZ-TV, WHDR-TV, WHIS-TV, WYAC-TV
Boston, Mass.	22	WHEN-TV, WGR-TV, WKOW-TV
Buffalo, N.Y.	87	KFVS-TV, WPSD-TV, WSIE-TV
Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.	74	KCRG-TV, KWWL-TV, WMT-TV
Cedar Rapids-Waterloo, Iowa	73	WCIA, WICS, WAND (formerly WTVF), WCHU
Champaign-Decatur-Springfield, Ill.	45	WCBS-TV, WHIN-TV, WSAZ-TV
Charleston-Huntington, W. Va.	29	WBTV, WCCB-TV, WSOO-TV
Charlotte, N.C.	92	WDEF-TV, WRCB-TV, WTVG
Chattanooga, Tenn.	3	WBDM-TV, WKBK, WCIU, WFLD, WGN-TV, WMAQ-TV
Chicago, Ill.	16	WCPO-TV, WKRC-TV, WLWT, WKYC
Cincinnati, O.	8	WEWS, WJW-TV, WKYC-TV
Cleveland, O.	83	WIS-TV, WHDK-TV, WOLO-TV
Columbia, S.C.	84	WRBL-TV, WTVM
Columbus, Ga.	30	WBNS-TV, WLWC, WTVN-TV
Columbus, O.	15	KRLD-TV, KTVY, WBAP-TV, WFAA-TV
Dallas-Ft. Worth, Tex.		
Dayton, Ohio (see Good City)	38	WHIO-TV, WKEF, WLWD
Dayton, O.		
Daytona Beach, Fla. (see Orlando-Daytona Beach)		
Decatur, Ill. (see Champaign-Decatur-Springfield)		
Denver, Colo.	40	KBTU, KWGN-TV (formerly KCTO) KLZ-TV, KOA-TV
Des Moines, Iowa	76	KRNT-TV, WHO-TV, WOI-TV
Detroit, Mich.	6	CKLW-TV, WJBK-TV, WKBD, WWJ-TV, WXYZ-TV
Durham, N.C. (see Raleigh-Durham)		
Elkhart, Ind. (see South Bend-Elkhart)		
Evansville, Ind.	89	WEHT, WFIE-TV, WTVW
Flint, Mich. (see Saginaw-Bay City-Flint)		
Fort Wayne, Ind.	99	WANE-TV, WKJC-TV, WPTA
Fort Worth, Tex. (see Dallas-Fort Worth)		
Fresno, Cal.	91	KAIL, KFRE-TV, KJED, KMJ-TV
Grand Rapids-Kalamazoo, Mich.	38	WKZO-TV, WOOD-TV, WZZM-TV
Green Bay, Wisc.	64	WBAY-TV, WFRV-TV, WLUK-TV
Greensboro-Winston Salem-High Point, N.C.	49	WFMY-TV, WGHF-TV, WISJ-TV
Greenville-Spartanburg, S.C.-Asheville, N.C.	44	WFRG-TV, WISE-TV, WLOS-TV, WSPA-TV
Hampton, Va. (see Norfolk-Fortsmouth-Newport News-Hampton)	69	WITN-TV, WNEB-TV, WNCT-TV
Harrisburg-Lancaster-Lebanon-York, Pa.	33	WGAL-TV, WHP-TV, WLYH-TV, WSBA-TV, WTPA
Harrisburg, Ill. (see Cape Girardeau-Paducah-Harrisburg)		
Hartford-New Haven, Conn.	13	WHCT, WTIC-TV, WHNB-TV, WHNH-TV
Hawkins, Neb. (see Lincoln-Hastings-Kearney)		
High Point, N.C. (see Greensboro-Winston Salem-High Point)		
Holyoke, Mass. (see Springfield-Holyoke)		
Houston, Tex.	25	KHOU-TV, KPRC-TV, KTRK-TV
Huntington, W. Va. (see Charleston-Huntington)		
Indianapolis, Ind.	38	WFBM-TV, WISH-TV, WLVI, WTTV
Jackson, Miss.	79	WJTV, WLBT
Jacksonville, Fla.	72	WFGA-TV, WJXT
Johnstown-Altoona, Pa.	41	WARD-TV, WFBG-TV, WJAC-TV
Kalamazoo, Mich. (see Grand Rapids-Kalamazoo)		
Kansas City, Mo.	34	KCMO-TV, KMBC-TV, WDAF-TV
Kearney, Neb. (see Lincoln-Hastings-Kearney)		
Knoxville, Tenn.	80	WATE-TV, WBIR-TV, WTVK
Lancaster, Pa. (see Harrisburg-Lancaster-Lebanon-York)		
Lansing, Mich.	47	WLIX-TV, WJIM-TV
Lebanon, Pa. (see Harrisburg-Lancaster-Lebanon-York)		
Lincoln-Hastings-Kearney, Neb.	93	KHAS-TV, KHOL-TV, KOLN-TV
Little Rock, Ark.	71	KARK-TV, KATV, KTHV
Los Angeles, Cal.	2	KABC-TV, KCOP, KHJ-TV, KMEX-TV, KNBC, KNXT, KPOL-TV, KTLA, KTTV

(DO NOT RETURN THIS LISTING TO THE COMMISSION)

Market	Rank	Market Area Commercial TV Stations
Louisville, Ky.	48	WAVE-TV, WHAS-TV, WLKY-TV
Madison, Wis.	81	WISC-TV, WKOW-TV, WMTV
Manchester, N.H.	53	WMUR-TV
Memphis, Tenn.	34	WHBO-TV, WMCY, WREC-TV
Miami, Fla.	20	WCKT, WLBW-TV, WTVJ
Milwaukee, Wis.	23	WISN-TV, WITI-TV, WTMJ-TV, WUHF
Minneapolis-St. Paul, Minn.	17	KNSP-TV, KSTP-TV, WCCO-TV, WTCN-TV
Mobile, Ala.-Pensacola, Fla.	73	WALA-TV, WEAR-TV, WKRG-TV
Moline, Ill. (see Quad City)		
Monterey, Cal. (see Salinas-Monterey-Santa Cruz)		
Nashville, Tenn.	42	WLAC-TV, WSIX-TV, WSM-TV
New Bern, N.C. (see Greenville-Washington-New Bern)		
New Haven, Conn. (see Hartford-New Haven)		
New Orleans, La.	43	WDSU-TV, WYUE, WFL-TV
Newport News, Va. (see Norfolk-Portsmouth-Newport News-Hampton)		
New York, N.Y.	1	WABC-TV, WGBS-TV, WNBC-TV, WNEW-TV, WNJU-TV, WOR-TV, WPIX, WNYC-TV
Norman, Okla. (see Oklahoma City-Oklahoma)		
Ogden, Utah (see Salt Lake City-Ogden-Provo)	35	WAVY-TV, WTAR-TV, WVEC-TV, WYAH-TV
Oklahoma City, Okla.	51	KOCD-TV, KWTU, WKYT-TV
Omaha, Neb.	60	KETV, KMTV, WQOW-TV
Orlando-Daytona Beach, Fla.	67	WDBO-TV, WESH-TV, WFTV
Pacific, Ky. (see Cape Girardeau-Paducah-Harrisburg)		
Panama City, Fla. (see Mobile-Pensacola)		
Pasadena, Ill.	98	WEEK-TV, WIRL-TV, WMBD-TV
Philadelphia, Pa.	4	KYW-TV, WCAU-TV, WFIL-TV, WIBF-TV, WKBS, WPHL-TV
Phoenix, Ariz.	4	KOOL-TV, KPHO-TV, KTVK
Pittsburgh, Pa.	62	KDKA-TV, WHIC-TV, WTAE
Portland, Me. (see Portland-Poland Spring)	9	KATU, KOW-TV, KOIN-TV, KPTV
Portland, Ore.	36	WCHS-TV, WGAN-TV, WHTN-TV
Portland-Poland Spring, Me.	39	WJAR-TV, WPRO-TV, WTEV
Portsmouth, Va. (see Norfolk-Portsmouth-Newport News-Hampton)		
Providence, R.I.	14	WHBF-TV, WOC-TV, WOAD-TV
Provo, Utah (see Salt Lake City-Ogden-Provo)		
Quad City (Davenport, Iowa-Rock Island-Moline, Ill.)	66	WRAL-TV, WTVB
Raleigh-Durham, N.C.	50	WRVA-TV, WTVR, WXEX-TV
Richmond, Va.	65	WDBJ-TV, WLVA-TV, WSLI-TV
Reno, Nev.	61	WHCT-TV, WOKR, WRQC-TV
Rochester, N.Y.	68	WCEE-TV, WREX-TV, WTVB
Roswell, Ill.	94	KCRA-TV, KOVR, KXTV
Salt Lake City, Ill. (see Quad City)		
Sacramento-Stockton, Cal.	27	WJRT-TV, WKXN-TV, WNNM-TV
Saginaw-Day City-Flint, Mich.	46	KMOX-TV, KPLR-TV, KSD-TV, KTVI
St. Louis, Mo.	12	KNTV (San Jose), KSBW-TV
St. Paul, Minn. (see Minneapolis-St. Paul)		
St. Petersburg, Fla. (see Tampa-St. Petersburg)		
Salinas-Monterey-Santa Cruz, Cal.	52	KCPX-TV, KSLN-TV, KUTV
Salt Lake City-Ogden-Provo, Utah	43	KENS-TV, KONO-TV, KWEX-TV, WOAI-TV
San Antonio, Tex.	37	KFMB, KOGO-TV, KAAR, KXTV, XEWT-TV
San Diego, Cal.	34	KGO-TV, KPIL, KRON-TV, KTVU
San Francisco, Cal.	7	KING-TV, KIRO-TV, KOMO-TV, KTNT-TV, KTVW
San Jose, Cal. (see Salinas-Monterey-Santa Cruz)		
Schenectady, N.Y. (see Albany-Schenectady-Troy)		
Schenectady, Pa. (see Wilkes-Barre-Scranton)		
Seattle-Tacoma, Wash.	21	KSLA-TV, KTLA-TV, KTBS-TV
Seaside, Cal.	69	KELO-TV, KSDO-TV
Shreveport, La.	90	WNUD-TV, WSBT-TV, WSJV
Sioux Falls, S.D.	97	KHQ-TV, KREM-TV, KXLY-TV
South Bend-Elkhart, Ind.	77	WHYN-TV, WWLP
Spartanburg, S.C. (see Greenville-Spartanburg-Ashville)		
Spokane, Wash.	78	WHEN-TV, WHYS-TV, WSYR-TV
Springfield, Ill. (see Champaign-Decatur-Springfield)		
Springfield-Holyoke, Mass.		
St. Louis, Mo. (see Wheeling-St. Louis)		
St. Paul, Minn. (see Minneapolis-St. Paul)		
St. Petersburg, Fla. (see Tampa-St. Petersburg)		
St. Paul, N.Y. (see Albany-Schenectady-Troy)		
St. Paul, Calif.	32	WFLA-TV, WLCY-TV, WSUN-TV, WTVT
St. Paul, D.C.	26	WSPD-TV, WTOL-TV
St. Paul, N.C. (see Albany-Schenectady-Troy)		
St. Paul, D.C.	58	KOTV, KTUL-TV, KVOD-TV
St. Paul, N.C. (see Albany-Schenectady-Troy)	10	WMAL-TV, WOOK-TV, WRC-TV, WTOP-TV, WTTG, WDCA-TV
St. Paul, N.C. (see Albany-Schenectady-Troy)		
St. Paul, D.C.	85	WEAT-TV, WPTV
St. Paul, N.C. (see Albany-Schenectady-Troy)	31	WSTV-TV, WTRF-TV
St. Paul, D.C.	56	KAKE-TV, KARD-TV, KTVH
St. Paul, N.C. (see Albany-Schenectady-Troy)	70	WBRE-TV, WDAU-TV, WNEP-TV
St. Paul, D.C.	95	WFMJ-TV, WKBN-TV, WYTV



## APPENDIX B

## TV channel allocation and usage—top 100 markets as of August 31, 1968

ARB rank (NWC)	Market	Commercial										Non-commercial																						
		Channels allocated					Stations on the air					Channels not applied for on the air					Stations on the air					Authorized Channels reserved					Channels applied for					Available channels		
		V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	
1	New York (Linden, New Brunswick, Newark, and Paterson, N.J.)	16	13	6	2									1				11	13	11	12			1										
2	Los Angeles (Corona, San Bernardino, Riverside, Fontana, and Glendale)	7	7	7	4													1	3		2													
3	Chicago (Aurora, Elgin, Joliet, Gary, and Hammond, Ind.)	4	9	4	2													1	2		1	2												
4	Philadelphia (Burlington, N.J., and Wilmington, Del.)	13	5	3	3													1	1		2	1												
5	Boston	3	4	3	2													1	1		1	1												
6	Detroit	3	3	3	1													1	1		1	1												
7	San Francisco, Oakland	4	5	4	2													1	1		1	1												
8	Cleveland (Lorain)	3	3	3	1													1	1		1	1												
9	Washington	4	3	4	2													1	1		1	1												
10	Pittsburgh (Greensburg)	3	3	3	3													1	1		1	1												
11	Baltimore	3	3	3	1													1	1		1	1												
12	St. Louis	4	2	2	4													1	1		1	1												
13	Hartford, New Haven, New Britain (Waterbury)	2	5	2	3													2	2		1	1												
14	Providence (New Bedford, Mass.)	3	3	3	3													2	2		1	1												
15	Dallas, Fort Worth (Richardson)	4	4	4	3													1	2		1	1												
16	ChicAGO	3	2	3	1													1	1		1	1												
17	Minneapolis, St. Paul	4	4	4	4													1	1		1	1												
18	Indianapolis (Bloomington)	4	3	3	3													1	1		1	1												
19	Atlanta	3	3	3	3													1	1		1	1												
20	Miami	4	4	4	4													1	1		1	1												
21	Buffalo	3	2	2	2													1	1		1	1												
22	Seattle, Tacoma	3	2	2	2													1	1		1	1												
23	Kansas City, Mo.	3	3	3	3													1	1		1	1												
24	Milwaukee	3	3	3	3													1	1		1	1												
25	Sacramento, Stockton	3	3	3	3													1	1		1	1												
26	Houston (Galveston, Rosenberg)	3	3	3	3													1	1		1	1												
27	Dayton	3	3	3	3													1	1		1	1												
28	Columbus, Ohio	3	3	3	3													1	1		1	1												
29	Johnstown, Altoona	3	3	3	3													1	1		1	1												
30	Harrisburg, Lancaster, York	2	2	2	2													1	1		1	1												
31	Tampa, St. Petersburg (Clearwater)	1	0	1	4													1	1		1	1												



## TV channel allocation and usage—top 100 markets as of August 31, 1968—continued

ARB rank (NWC)	Market	Commercial										Non-commercial																				
		Channels allocated					Stations on the air					Channels reserved					Stations not applied for															
		V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	
78	Des Moines (Ames)	3	4	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
79	Jackson, Miss.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
80	Cape Girardeau, Mo.; Paducah, Ky.; Harrisburg, Ill.	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
81	Columbus, Ga.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
82	Youngstown	4	4	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
83	Columbia, S.C.	1	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
84	Baton Rouge	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
85	Springfield, Holyoke	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
86	Greenville, Washington, New Bern, N.C.	3	1	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
87	Richmond	1	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
88	Madison	1	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
89	Lincoln, Hastings, Kearney (Albion, Grand Island, Superior)	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6	3	6
90	Fresno (Hanford, Visalia)	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3
91	Chattanooga	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3	1	3
92	Evansville	1	3	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1
93	Sioux Falls	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
94	South Bend, Elkhart	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
95	West Palm Beach	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
96	Ft. Wayne	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4	2	4
97	Rockford, Ill. (Freeport)	1	3	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	
98	Peoria, Ill.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
99	Augusta	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
100	Terre Haute	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Subtotal—Top 50 markets		157	163	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157	53	157
Subtotal—51 through 100		107	134	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107	41	107
Total 100 markets		264	297	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264	94	264

1 Channels 13 and 31—Commercial channels used by ETV.

2 Channel 12—Commercial channel used by ETV.

3 Channel 23—Commercial channel used by ETV.

4 Channel 17—Commercial channel used by ETV.

5 WFLX—Channel 19 shares time with WWSB-TV station.

6 Channel 25—Commercial channel used by ETV.

## APPENDIX C

Part 74, subpart K, is amended as follows:

1. In section 74.1101, paragraph (i) is amended and paragraphs (j), (k), (l), (m), (n), and (o) are added as follows:

§ 74.1101 Definitions.

(i) *Distant signal.* The term "distant signal" means the signal of a television broadcast station which is extended or received beyond the predicted grade B contour of that station.

(j) *Major television market.* The term "major television market" means a television market listed in § 74.1107(a) of this chapter.

(k) *Designated community in a major television market.* The term "designated community in a major television market" means a community named in the list of major television markets in § 74.1107(a) of this chapter.

(l) *Smaller television market.* The term "smaller television market" means a television market which is not listed in § 74.1107(a) of this chapter.

(m) *Specified zone of television broadcast stations.* The term "specified zone of a television broadcast station" means the area extending 35-air miles from the main post office in the community or communities to which that station is assigned by the *Table of Assignments* contained in § 73.606 of this chapter.

(n) *Full network station.* The term "full network station" means a television broadcast station which is owned by a national television network or which has a primary affiliation contract with a single such network and no secondary affiliation with any other network.

(o) *Partial network station.* The term "partial network station" means a television broadcast station which is affiliated with more than one national television network or which has a secondary affiliation contract with a single such network.

2. In section 74.1103, new subparagraphs (b) (5) and (d) (4) are added to read as follows:

§ 74.1103 Requirement relating to distribution of television signals by community antenna television systems.

(b) *Exceptions.* . . .

(5) No system shall carry the signal of any station if the carriage of such signal would be inconsistent with § 74.1107(c) of this chapter.

(d) *Manner of carriage.* . . .

(4) The signal shall be carried in full, without deletion or alteration of any portion except as required by paragraph (f) of this section.

3. Section 74.1107 is revised to read as follows:

§ 74.1107 Requirements applicable to carriage of television broadcast signals in specified zones and in areas outside of specified zones.

(a) The major television markets and their designated communities are:

- (1) New York, N.Y.
- (2) Los Angeles, Calif.
- (3) Chicago, Ill.
- (4) Philadelphia, Pa.
- (5) Boston, Mass.
- (6) Detroit, Mich.
- (7) San Francisco, Calif.
- (8) Cleveland, Ohio
- (9) Washington, D.C.
- (10) Pittsburgh, Pa.
- (11) Baltimore, Md.
- (12) St. Louis, Mo.
- (13) Hartford, New Haven, Conn.
- (14) Providence, R.I.; New Bedford, Mass.



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- (15) Dallas, Fort Worth, Tex.
- (16) Cincinnati, Ohio
- (17) Minneapolis, St. Paul, Minn.
- (18) Indianapolis, Ind.
- (19) Atlanta, Ga.
- (20) Miami, Fla.
- (21) Buffalo, N.Y.
- (22) Seattle, Tacoma, Wash.
- (23) Kansas City, Mo.
- (24) Milwaukee, Wis.
- (25) Sacramento, Stockton, Calif.
- (26) Houston, Galveston, Tex.
- (27) Dayton, Ohio
- (28) Columbus, Ohio
- (29) Johnstown, Altoona, Pa.
- (30) Harrisburg, Lancaster, Lebanon, York, Pa.
- (31) Tampa, St. Petersburg, Fla.
- (32) Memphis, Tenn.
- (33) Charlotte, N.C.
- (34) Syracuse, N.Y.
- (35) Toledo, Ohio
- (36) Portland, Oreg.
- (37) Wheeling, W. Va. ; Steubenville, Ohio
- (38) Grand Rapids, Kalamazoo, Mich.
- (39) Denver, Colo.
- (40) Birmingham, Ala.
- (41) Nashville, Tenn.
- (42) Albany, Schenectady, Troy, N.Y.
- (43) New Orleans, La.
- (44) Greenville, Spartanburg, S.C. ; Asheville, N.C.
- (45) Greensboro, Winston-Salem, High Point, N.C.
- (46) Flint, Saginaw, Bay City, Mich.
- (47) Louisville, Ky.
- (48) Charleston, Huntington, W. Va.
- (49) Lansing, Mich.
- (50) San Diego, Calif.
- (51) Oklahoma City, Okla.
- (52) Raleigh, Durham, N.C.
- (53) Norfolk, Portsmouth, Newport News, Hampton, Va.
- (54) Manchester, N.H.
- (55) Omaha, Nebr.
- (56) Wichita, Hutchinson, Kans.
- (57) San Antonio, Tex.
- (58) Tulsa, Okla.
- (59) Salt Lake City, Ogden, Provo, Utah
- (60) Salinas, Monterey, Calif.
- (61) Phoenix, Ariz.
- (62) Davenport, Iowa ; Rock Island, Moline, Ill.
- (63) Portland, Poland Spring, Maine
- (64) Rochester, N.Y.
- (65) Orlando, Daytona Beach, Fla.
- (66) Richmond, Petersburg, Va.
- (67) Roanoke, Lynchburg, Va.
- (68) Shreveport, La. ; Texarkana, Tex.
- (69) Wilkes-Barre, Scranton, Pa.
- (70) Green Bay, Wis.
- (71) Little Rock, Ark.
- (72) Champaign, Decatur, Springfield, Ill.
- (73) Mobile, Ala. ; Pensacola, Fla.
- (74) Cedar Rapids, Waterloo, Iowa
- (75) Jacksonville, Fla.
- (76) Spokane, Wash.
- (77) Knoxville, Tenn.

- (78) Des Moines, Fort Dodge, Iowa
- (79) Jackson, Miss.
- (80) Cape Girardeau, Mo.; Paducah, Ky.; Harrisburg, Ill.
- (81) Columbus, Ga.
- (82) Youngstown, Ohio
- (83) Columbia, S.C.
- (84) Baton Rouge, La.
- (85) Springfield, Holyoke, Mass.
- (86) Greenville, Washington, New Bern, N.C.
- (87) Binghamton, N.Y.
- (88) Madison, Wis.
- (89) Lincoln, Hastings, Kearney, Nebr.
- (90) Fresno, Calif.
- (91) Chattanooga, Tenn.
- (92) Evansville, Ind.
- (93) Sioux Falls, S. Dak.
- (94) South Bend, Elkhart, Ind.
- (95) West Palm Beach, Fla.
- (96) Fort Wayne, Ind.
- (97) Rockford, Ill.
- (98) Peoria, Ill.
- (99) Augusta, Ga.
- (100) Terre Haute, Ind.

(b) *Carriage of distant signals in major television markets.*—No CATV system operating in a community located in whole or in part, within the specified zone of a television broadcast station assigned to a designated community in a major television market shall extend the signal of a commercial television broadcast station beyond the predicted grade B contour of the station, unless such station has expressly authorized the system to retransmit the program or programs on the signal to be extended: *Provided, however,* That the system may carry the signal of any noncommercial educational station, in the absence of timely objection filed pursuant to section 74.1109 of this chapter by any local educational station or by any local or State educational television agencies: *Provided, further,* That priority of carriage is afforded to the signals of educational stations located in the same State or closest to the system.

(c) *Carriage of signals from a major television market in another major market.*—No CATV system operating in a community located wholly within the specified zone of a television broadcast station assigned to a designated community in a major television market shall carry the signal of a commercial television broadcast station assigned to a designated community in another major television market, unless the community of the CATV system is also located wholly within the specified zone of the station in the other major market or unless the system has the express authorization of the originating station to retransmit the program or programs on the signal to be extended: *Provided, however,* That the system may carry the signal of any noncommercial educational station assigned to such other major market, in the absence of timely objection filed pursuant to section 74.1109 of this chapter by any local market educational station or by any local or State educational television agencies.

(d) *Carriage of distant signals in smaller television markets.*—(1) No CATV system operating in a community located in whole or in part, within the specified zone of a television broadcast station assigned to a smaller television market shall extend the signal of a television broadcast station beyond the predicted grade B contour of such station, except as authorized in subparagraphs (2), (3), and (4) of this paragraph: *Provided, however,* That such a system may carry additional distant signals if the system has the express authorization of the originating station to retransmit the program or programs on any additional signals to be extended.

(2) The system may carry such distant signals as may be necessary to furnish to its subscribers the signals of a full network station of each of the national television networks counting any full network stations carried on the system pursuant to section 74.1103(a) of this chapter, provided that

the distant signals are obtained from the closest full network station in the region or in the State of the system and do not include more than one full network station of the same network.

(3) The system may carry the distant signal of one independent station obtained from the nearest community with an operating independent station or stations. In the event that such community has more than one operating independent station, the system shall select the signal of whichever independent station it chooses to carry. The system may also carry the distant signal of any independent station that may subsequently commence operation at a location closer to the community of the system.

(4) The system may carry the signal of any noncommercial educational television station, in the absence of timely objection filed pursuant to section 74.1109 of this chapter by any local educational station or by any local or State educational television agencies, provided that priority of carriage is afforded to the signals of educational stations located in the same State or closest to the system.

(c) *Carriage of distant signals in areas outside any specified zone.*—  
(1) No CATV system operating outside the specified zones of all television broadcast stations shall extend the signal of any television broadcast station beyond the station's predicted grade B contour unless the system is carrying the signals of all television broadcast stations in the same class that are operating in communities located closer to the system. The classes of television broadcast stations to which this subparagraph is applicable are the following:

- (i) Stations that are full network stations of the same network.
- (ii) Stations that are partial network stations of the same network or networks.
- (iii) Independent stations.
- (iv) Noncommercial educational stations.

(2) The Commission may waive the provisions of subparagraph (1) of this paragraph for good cause shown in a petition filed pursuant to section 74.1109 of this chapter, such as a showing that (i) the community of the more distant station is located in the same State or (ii) the system's subscribers have a greater community of interest with the region served by the more distant station.

(f) *Applicability of this section.*—The provisions of this section do not apply to day signals which a CATV was supplying to subscribers in its community on December 20, 1968 (or pursuant to prior Commission authorization, whenever given), or to carriage of the same signals by any other CATV system that subsequently commences operation in the same community, unless it is proposed to extend lines into another community. Where a CATV system is limited by order of the Commission to carrying signals governed by this section only in particular geographic areas of a community, the provisions of this section shall apply to carriage of such signals by any CATV system in all other areas of that community.

4. In section 74.1109, a new note is added as follows:
- § 74.1109 Procedures applicable to petitions for waiver of the rules, additional, or different requirements and rulings on complaints or disputes.

NOTE.—It is not contemplated that the provisions of section 74.1107 (b), (c), and (d) of this chapter, relating to carriage of television broadcast signals in specified zones, will be waived.

#### DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I dissent.

The *Notice of Proposed Rulemaking and Notice of Inquiry* adopted this day by the Commission majority is a complex document divided into five parts:

- I. Nature and scope of proceeding.
- II. Background.

III. Proposed CATV rules on required program origination, advertising, equal time, spot or identification, fairness, doctrine, ownership, common carrier leasing of channels, reporting requirements, and technical standards.

IV. Proposed rules on CATV importation of signals in a 35-mile zone of TV stations and retransmission permission of stations in the top 100 markets, plus Interim Procedures.

V. General areas of inquiry on CATV's role in the national communications structure.

The Interim Procedures of part IV are crucial because they immediately apply new rules which will obtain during the pendency of the proceeding. I believe that such application now of the new "interim" rules is fatally defective because the rules are substantive and are applied without rulemaking as required by the Administrative Procedure Act. The Commission majority makes no showing, as required by section 4 of the APA, that the "situation [is one] in which an agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in rules issued) that notice and the procedure thereon are impracticable, unnecessary, or contrary to the public interest."

It appears to me that the interim procedures will either compound the administrative quagmire the Commission got itself into with the *Second Report and Order* or they will completely stifle further development of CATV. I am satisfied that the latter is a distinct possibility since only the most daring will be willing to gamble additionally on the outcome of the proposals in part III without some prospect of grandfathering protection which the *Notice* explicitly precludes.

The basic new rule is a revision of section 74.1107 and provides, among other things, that no CATV system within a 35-mile zone of a station can carry distant signals unless (a) in the top 100 markets, it has retransmission permission of the TV station, and (b) in markets in the top 100, it uses the nearest distant signals necessary to fill its complement of three networks, one independent and one educational station (no retransmission permission is required).

I disagree with the new rule which imposes on CATVs the concept of section 325(a) of the Communications Act of requiring express authority from the originating station to retransmit its programming—Congress has, to date, refused to impose. The requirement has the effect of copyright clearance. The Supreme Court ruled in the *nightly* case that carriage of a television station's programming is a performance under the Copyright Act and CATVs are not subject to the act. Thus, CATVs do not now need to secure copyright clearance from TV stations, as they may be required to, in effect, under the new rule here put into force.

The Interim Procedures, are, I believe, contrary to the public interest because they deny to the people of the United States a communications service for which they have shown a demand in the market.

I have long urged the Commission to hold public hearings on CATV to determine what role it can best play in communications service to the public and, upon such determination, issue notices of proposed rulemaking to implement the conclusions. I believe that the present proceeding puts the cart before the horse in proposing rules.



without first determining what CATV's overall role is to be and in prejudging the role by proposals which are presently unsupported.

STATEMENT OF COMMISSIONERS KENNETH A. COX AND ROBERT E. LEE  
CONCURRING IN PART AND DISSENTING IN PART

We agree with the main thrust of the action taken here. Some change in our approach to CATV matters is clearly necessary in order to permit the orderly integration of cable service into our basic over-the-air television service without undue disruption of the latter. We agree that the shift in emphasis involved in the retransmission concept is a sound one.

However, we believe that the reduction in the area to be preserved against unfair competition is too extreme. The radius of the grade A coverage of a full powered VHF station is commonly 60 miles or more. Cutting back from the grade A standard of the *Second Report and Order* to the proposed zone with a radius of 35 miles reduces the area of concern by almost exactly two-thirds. While in many markets the bulk of the audience may be within this smaller zone, in other cases a significant percentage of the market's net weekly circulation will be outside that area. We would have preferred to use the predicted grade A contour, or something approximating it, to the 35-mile standard here proposed.

Furthermore, while we think this proposal deals with the problems of the smaller markets more realistically than did the *Second Report and Order*, we are not satisfied that it adequately protects small market stations from harmful fragmentation of their audiences.

Although there are other matters of detail about which we have some question, we believe that the proposal in its entirety is generally sound and represents a most constructive step forward.

## SUPREME COURT OF THE UNITED STATES

No. 71-506

UNITED STATES, ET AL., PETITIONERS

v.

MIDWEST VIDEO CORPORATION

ORDER ALLOWING CERTIORARI—Filed January 10, 1972

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.